The Province of Alberta

IN THE MATTER OF "THE NATURAL GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into Scheme to be adopted for Gathering, Processing and Transmission of Natural Gas in Turner Valley

---

G. M. BLACKSTOCK, Esq., K.C., *Chairman*

Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

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MR. STEER: Mr. Chairman, before opening, we had asked Mr. Donellan for some figures on the laid-down cost of absorption plant product here from other sources of supply and it was only after closing of the taking of the evidence that we realized that that had not been furnished. I am informed Mr. Harvie has been good enough to furnish us with a statement of which I have placed some copies on the desk and I only ask to have it marked and if anybody wants to ask any questions on it, perhaps it might be done at a later date.

THE CHAIRMAN: That will be Exhibit 177.

STATEMENT FURNISHED BY THE BRITISH AMERICAN OIL COMPANY LIMITED RE LAID-DOWN COST OF ABSORPTION PLANT PRODUCT IS NOW MARKED EXHIBIT 177.

MR. CHAMBERS: These figures are prepared by Mr. Donellan?

MR. STEER: Yes.

MR. CHAMBERS: I take it after examination if we want to cross-examine Mr. Donellan during this week or while we are sitting, it can be done?

THE CHAIRMAN: It must be done if you want it.

MR. HARVIE: There is one other point, Mr. Chairman, that I might mention before we proceed and that is another matter, I think, that has developed since we adjourned that may be of material interest to the Commission, and that is the Edmonton situation. I have before me an extract from the Calgary Herald of the 31st of May, 1946, which deals with an offer of the Edmonton Gas Company to the City of

Edmonton in connection with the reduction in rates. Now as I say it may or may not be material in this Inquiry but I would like to have it understood as to whether it would be in order to treat it as evidence if we want to refer to it.

THE CHAIRMAN: If you wish to do that, perhaps the best way to do it would be to file a copy of the new order of rates now applicable in the City of Edmonton, or which will be applicable after the end of this month.

MR. HARVIE: I did not know such an order had been granted.

THE CHAIRMAN: When did I sign it, Mr. Steer?

MR. STEER: Friday, sir.

MR. HARVIE: If Mr. Steer, with the consent of every person, would be good enough to file a copy.

MR. STEER: Subject to considering its relevancy.

MR. CHAMBERS: I would like to take the same position as Mr. Steer. If this is going to be relevant and put into the proceedings we might want to go further than that, than just putting in the Order. Personally, I do not see the relevancy at the moment but I would like to reserve my rights on it if it is going to be put in evidence at all.

MR. FENERTY: I think it is most relevant and for once I support my friend Mr. Harvie in this connection.

THE CHAIRMAN: I can assure you now that I am not going to hold in Calgary an Inquiry as to the gas rates applicable in the City of Edmonton.

MR. FENERTY: No. My suggestion is that the order should be filed and nobody should say a word about it except in Argument.

THE CHAIRMAN: I happen to be in a position where I

know something of the conditions under which that Order was granted and to suggest there was any similarity between this situation and the situation in Edmonton is just . . . . . well there is no similarity. The two situations are as wide apart as the poles, so I do not think it will hurt any one of you to have that Order filed. I am not going to hold an Inquiry, that is a certainty.

MR. FENERTY: It has got some relevance to an argument which I propose to make but I can make it just as well by assuming that a certain thing happened and what would the result be? So I am not worrying about it.

MR. HARVIE: I want it made clear whether it will be filed or not.

THE CHAIRMAN: I am perfectly satisfied to have it filed.

MR. STEER: I want to consider what my position is and I will let the Board know in the morning.

THE CHAIRMAN: Right.

MR. CHAMBERS: And I will do the same, sir.

THE CHAIRMAN: Are you ready, Mr. Chambers?

MR. CHAMBERS: Sir, in the first part of my argument, ...

THE CHAIRMAN: Mr. Chambers, pardon me just for one moment. I see that Mr. Blanchard is not here. I heard the other day he was ill. Does anyone know?

MR. McDONALD: He was quite all right on Saturday at noon, sir. Maybe I could call and see if he is in his office.

THE CHAIRMAN: All right. I am sure Mr. Chambers will have some preliminary observations to make and he will find

them in the record tomorrow.

MR. CHAMBERS: In the first part of my argument, sir, I think it advisable not only from the standpoint of my clients but also probably in the interests of all of us to advert first to the Act itself and to review very briefly the most pertinent sections. The Statute as we know was enacted and brought into force on the 24th day of March, 1944 and in Section 2 (h) (i) (k) (l), as amended in 1945 and also sections 68, 69 and 70 in effect define the term "Public Utility" as it is used throughout the statute and the effect of those sections to which I have referred is to make or include in the expression "public utility" the following, as I see it:

(i) every well (and its equipment) producing or capable of producing natural gas;

(ii) gathering pipe lines, compressors and equipment incidental or auxiliary thereto, that process, and

(iii) scrubbing plant.

Now although natural gas (as defined by section 2 (e) is not a public utility the foregoing items of equipment that I have referred to for the handling of that natural gas are public utilities. Furthermore, sections 67, 71 and 72 confer on the Board specific and very definite powers as to production, delivery, sale and the storage of natural gas exclusive of its gasoline content or component.

Now although absorption plants or extraction plants are not public utilities under the Act, nevertheless section 72(3) and (4) confer on the Board the power to determine what percentage of the plant's

sale price of the gasoline it extracts shall be paid to the producer.

By The Natural Gas Utilities Act the legislature of the Province has as a matter of legislative policy, declared and decided that first of all the proprietors of public utilities as therein defined, and secondly, the owners of natural gas, excluding its gasoline component, when the same is produced, are no longer free agents in the use and disposition of their property or in the prices to be charged for their services or for their residue natural gas.

In other words the legislature has decided that residue natural gas, that its use and disposition with the equipment for handling it; that the spending of money to increase those facilities and that the prices to be charged for it and for handling it are all matters of, or clothed with, the public interest and that in the general interest and welfare of the public, the private rights of ownership shall, as from the passing of the Act, be subject to regulation and control by your Board, as set forth in this Statute.

Now first of all, I would like to refer to Section 67 and as, in my submission, that section is probably the root of the whole Statute, I am going to read it, leaving out the words that I consider are not particularly pertinent.

Sub-section (1)

"Every contract.....which.....reserves to any one person....the exclusive right to sell or supply or to purchase or take delivery of natural gas to or for the markets available or to become available

"for such natural gas and in particular but without restricting the generality of the foregoing every contract made between the owner.....of any scrubbing plant and any person.....supplying natural gas whether by wholesale or by retail to the ultimate consumer thereof which.....reserves to the owner.....of such scrubbing plant the exclusive right to supply natural gas to such person.....as and from the date of coming into force of this Act shall be null and void to the extent that such contract.....reserves in manner aforesaid the right to sell or supply or purchase or take delivery of natural gas."

Then we come to Sub-section (2):

"Notwithstanding the terms of subsection (1) the Board is hereby authorized and directed.....to consider and review.....all of the terms, conditions and provisions of every contract..... between whatever parties made in any way relating to the....selling, purchasing, storing and/or otherwise dealing with natural gas and shall have power by order to approve, amend, alter, vary or nullify any or all terms of such contracts..... provided that no such approval, alteration or variation shall confer upon any party to any such contract.....any exclusive right of the kind referred to in subsection (1)".

Then there is subsection (3):

"No contract made after the coming into force of this Act in any way relating to the .....selling,

"purchasing.....and/or otherwise dealing with natural gas shall contain any exclusive right of the kind referred to in sub-section (1) and no such contract shall have any force or effect unless and until approved by the Board....."

(Go to page 6515)

And then Sub-section 4:

"The provisions of this section shall not apply to franchises conferred by statute, nor to contracts..... entered into pursuant to any statute insofar as such contract.... relates to the supply.....of natural gas.....within the confines of any municipality and made between any municipal corporation and any person.....supplying natural gas to the ultimate consumer.....but the provisions of this section shall apply..... to all such persons.....other than municipal corporations in this subsection referred to."

Now then the term "of the municipality" was defined by the Act itself in Section 2 (h) to mean any city, town, village or municipal district.

Now in my submission it is obvious that the following contracts which have been filed as Exhibits fall within the perview of this section, namely:

First of all Exhibit 69, which is made up of agreements between Royalite and Canadian Western dated the 21st day of December, 1921, and the 10th day of July, 1925, respectively and agreement between Royalite, Madison and Canadian Western dated the 20th day of March, 1944.

And there Madison took the place of Royalite in the contract.

Secondly: Exhibit 71, which is an agreement dated the 20th day of March, 1940, between Royalite and Valley Gas Company and agreement between Royalite, Madison and Valley Gas Co., dated the 11th day of August, 1944.

And there again Madison took the place of Royalite in the contract with the Valley Gas Company.

Thirdly, Exhibit 99, which is the Bow Island agreement dated the 20th day of August, 1930, between Royalite and Canadian Western;

And fourth, Exhibit 143, which is an agreement dated the 2nd day of August, 1941, between Canadian Western and Alberta Nitrogen Products Limited.

Now I would point out that none of these agreements is one which, - wherein first of all, is a franchise conferred by statute; none of the agreements was entered into pursuant to a statute, insofar as it relates to the supply of natural gas, within a municipality;

None of these agreements has, as one of its parties, a municipal corporation.

In other words I say that by existing law Section 67 and particularly sub-section 4 thereof, that these, that all these four agreements, all these four Exhibits, come within the perview of that section.

Now then Section 71, and that section says:

Sub-section 1:"Notwithstanding the provisions of any contract .....the Board may, by order, direct that the owner.....of any well.....and/or the proprietor of any pipe line.....and/or the proprietor of any scrubbing plant.....shall do certain things:

First, Clause (a) construct pipe lines..... install compressor and all other equipment and do.....all..... acts.....which the Board deems necessary.....for the purpose of conserving, gathering and transporting.....to any.....point as directed by the Board any.....natural gas at wells or elsewhere which in the Board's opinion can be effectively and economically used or stored as hereinafter provided;

And then Clause (b):

Gather in and/or transport.....as directed by the Board any.....natural gas which in the Board's opinion can be effectively and economically used or stored as hereinafter provided:

(c) purify, scrub or otherwise treat for the removal therefrom of sulphretted hydrogen.....that portion of the natural gas gathered in accordance with.....(a) and (b) which is required for the market;

(d) purchase and take delivery of at prices fixed by the Board all natural gas ordered by the Board to be delivered and /or sold and in the quantities fixed by the Board;

(e) return to the underground formation.... in accordance with such terms and conditions as the Board shall prescribe.....any.....natural gas gathered which is in excess of the market requirements.....;

(f) sell the natural gas gathered and/or treated in accordance with.....(a), (b), (c) and (d) at the prices and in quantities fixed by the Board to such..... marketers and/or users.....as the Board shall direct from time to time."

Now that is sub-section 1 of Section 71.

Then Sub-section (2):

"The Board shall have power.....to require the owner.....of any well.....to sell and deliver to the person.....designated by the Board all natural gas produced at the .....well, or such portion.....as the Board.....shall stipulate, at the prices fixed.....in accordance with Section 72....."

And then Sub-section 4:

"The Board shall have power.....to require the owner.....of an absorption plant.....which has in.....its possession or under.....its control natural gas in which..... it has a proprietory interest, to sell and deliver such natural gas.....to the person;.....designated by the Board at the prices fixed by the Board....."

And then Sub-section 5:

"The Board shall have power.....to restrict and control the wasteful use of natural gas....."

Now those two sections, I submit, Sections 67 and 71, constitute, by and large the general overriding powers of the Board as to two things, as to the mechanism and the operation.

Now then Section 72 is a complimentary section and sub-section (1) says this:

"Notwithstanding the terms of any contract the Board may.....fix and determine:

(a) the just and reasonable price to be paid for natural gas in its natural state as and when produced..... from the well-head.....provided always that the price fixed.... shall not include any price or value of any component part of the natural gas to be extracted therefrom and sold before delivery of the natural gas to a public utility.....for distribution to the ultimate consumer;

(b) the just and reasonable price.....to be paid for natural gas, which has been gathered and delivered to an absorption plant and after it has been subjected to treating.....by absorption.....for the extraction therefrom of natural gasoline or other hydrocarbons;

(c) the just and reasonable price.....to be

paid for natural gas after it has been purified.....or otherwise treated for the.....removal therefrom of sulphretted hydrogen.....including the price to be paid for such purified natural gas by a proprietor of a public utility as defined by this Act or by The Public Utilities Act, purchasing the same for distribution to the ultimate consumer or otherwise;

(d) the just and reasonable price.....to be paid for natural gas which, by the terms of any order made by the Board under.....section 71 is required to be returned to the underground formation for storage;

(e) the just and reasonable prices to be paid for all commodities not hereinbefore provided for over which the Board has jurisdiction.....;

(f) the just and reasonable prices for all services over which the Board has jurisdiction."

And then we come to the new sub-section (1a) which was added in 1945:

"(1a) Notwithstanding any of the other provisions of this Act in fixing and determining the just and reasonable.....prices as provided for in.....(a) and (b) of subsection (1), the Board shall not be required.....to fix or determine the.....prices for.....or on the basis of, any individual well or wells or of the value or cost thereof or the investment therein or a rate of return thereon.....and in the fixing and determining of such prices the Board may adopt any just and reasonable basis or method of arriving at or computing such.....prices as the Board may deem to be applicable or proper,having regard to all circumstances and factors involved."

And then Sub-section (2):

"The Board may fix and determine a price to be paid to the owner thereof for natural gas which by order of the Board has been retained in the underground formation notwithstanding that the production of such natural gas has been allowed by order of the Petroleum and Natural Gas Conservation Board."

Then Sub-section (3):

"Notwithstanding the terms of any contract between the owner.....of natural gas.....and the operator of any absorption plant the Board shall, by order fix and determine, the proportion of the price received by the operator of such plant to be paid by him to such owner.....for the gasoline or other hydrocarbon content of such natural gas....."

Now then it is to be observed that:

(a) Section 67 is designed so as to preclude either existing or future contracts between private parties or corporations from interfering with the general scheme of the Act and the powers of the Board for the implementation of that scheme:

(b) Section 67 also empowers the Board so to prescribe or revise existing and future contracts between such parties as to give effect to the schemes set up, and the prices fixed, by the Board;

Then (c), Section 71 confers on the Board:

(i) to require the construction and operation of public utility plant and equipment for the handling of natural gas that can be economically used or stored. (sec. 71 (1) (a).

(ii) power to require the proprietor of the public utility gas equipment, so constructed, to gather and transport natural gas that can be economically used or

stored; (sec. 71 (1) (b);

(iii) power to require the proprietor of the public utility gas scrubbing plant to scrub or purify such gas which is required for the market; (sec.71 (1) (c);

(iv) power to require the public utility proprietor of the pipe line or of the scrubbing plant to purchase and take delivery of such natural gas; (sec.71 (1) (d);

(v) power to require the well owner or such public utility proprietor to store such gathered natural gas that is in excess of the market requirements; (sec.71 (1) (e));

(vi) power to require the well owner and/or the public utility proprietor to sell such natural gas so produced, gathered and/or treated; (sec. 71 (1) (f) and sec. 71 (2);

(vii) power to require an absorption plant operator which has natural gas in its possession or under its control to sell and deliver the same as the Board shall direct; (sec. 71 (4));

And then (viii), power to restrict and control the wasteful use of gas; (sec. 71 (5)).

(Go to Page 6522)

Section 72 specifically sets forth the price-fixing powers of the Board for the natural gas and services referred to in section 71.

But it is to be observed that the proviso to section 72 (1) (a) excludes the gasoline content from the Board's control and price fixing powers;

Section 71 (4) makes it clear, however, that the residue gas at all times remains under the control of the Board.

Section 72 (3) empowers the Board to fix the percentage of the gross price realized from the gasoline content that is to be paid by the absorption plant to the producer for the gasoline component.

It is to be noted that section 72 (of Part 111) empowers the Board, and gives it jurisdiction, to fix "just and reasonable prices".

In addition to the specific powers conferred on the Board by sections 67, 71 and 72 of the Act (which are in Part 111 thereof) Part 11 of the statute (consisting of sections 47 to 66) sets forth what I submit or call the general regulatory powers of the Board as to, and the restrictions on, public utilities and their proprietors.

Section 47 (1) specifically states that Part 11,

"shall apply to all public utilities as defined by this Act".

Section 50:

"(1) The Board.....shall have power by order in writing made, after notice to and hearing of the parties interested:

(a) to fix just and reasonable rates, charges or schedules thereof which shall be imposed, observed and followed thereafter by any proprietor;

"(b) to fix just and reasonable classifications..... practices, measurements or service to be furnished, imposed.....and followed thereafter by any proprietor;

(c) to require every proprietor of a public utility:

.....

(ii) to furnish.....proper service and.....to maintain its property.....in such condition as to enable it to do so;

(iii) to.....construct, maintain and operate any extension of.....its facilities when in the judgment of the Board such extension.....is reasonable and practicable and will furnish sufficient business to justify its construction and maintenance, and when the financial condition of the proprietor of the utility reasonably warrants the original expenditure required in making and operating the extension".

.....

"(2) Nothing in this or the preceding section.....shall limit or restrict the jurisdiction of the Board of Utility Commissioners.....to fix the rates to be charged by public utilities for the supply of natural gas to the ultimate consumer."

Then we come to Section 49 which is a section of certain importance in this hearing.

Section 49:

"(1) The Board shall have power:

(a) to investigate.....any matter concerning any public utility;

(b) .....to appraise and value the property of any public utility.....for the purpose of carrying out any of

the provisions of this Act, and in making such valuation the Board may have access to and use any books .....of any Department or board of the Province or any municipality thereof;

....."

Then we have Section (2) which so far as I know is the first time it appears in our regulatory legislation. Section (2) says this:

"In fixing and determining prices or values of any real or personal property for any of the purposes of this Act the Board shall not be bound by the price paid by the owner or the replacement cost or by any book values .....for such property, but may adopt any basis or formula which to it shall appear just and reasonable and without restricting the generality of the foregoing the Board in fixing such prices or values shall determine the just and reasonable allowance for depreciation and in so doing may take into account depreciation already taken by the owner or any antecedent owner of such property."

I will have something more to say about this later on.

THE CHAIRMAN: That is the Hope Natural Gas case ?

MR. CHAMBERS: That is probably where the idea came from anyway.

Then Section 52 is also of particular importance in certain phases of the matter I am submitting to you, sir. I am referring only now to the parts that I consider relevant.

Section 52:

"(1) No proprietor of a public utility shall:

(a) make or exact any unjust or unreasonable, unjustly discriminatory or unduly preferential.....rate..... charge or schedule for any product or service supplied or rendered by it.....;

.....

(c) make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever;

.....

That is all I intend to say so far as Part 2 is concerned at the moment and I want now to refer to Section 74 which is contained in Part 111:

Section 74 (Part 111)

"(1) Every proprietor of every pipe line engaged in gathering, transporting, handling or delivering natural gas shall be a common carrier in respect of all natural gas gathered or transported or handled or delivered..... by means of such pipe line provided that the provisions of this subsection shall not apply to service pipe lines within the boundaries of any plant carrying on any industrial operation....."

"(2) No proprietor of a pipe line who is a common carrier shall directly or indirectly make or cause to be made or suffer or allow to be made any discrimination of any kind as between any of the persons for whom any natural gas is gathered or transported by means of the pipe line."

Now that at the moment is all I propose to say to specific provisions of the Act. I would now like to turn to what in my conception are certain principles that are applicable to the legislation in its interpretation and its operation. Now first of all I submit that unless the statute clearly says so in unmistakeable terms it cannot have a retrospective effect either directly or indirectly.

(11) PRINCIPLES APPLICABLE TO THE LEGISLATION - ITS INTERPRETATION AND OPERATION.

1. Retrospective Effect.

Inasmuch and insofar as The Natural Gas Utilities Act purports to interfere with private rights and property it cannot be given a retroactive effect except only to the extent that the plain words of the statute are incapable of no other construction.

Now, sir, I intend to refer to certain decisions and I have made arrangements with the Reporters to have them placed in the record and with the approval of you, sir, and all parties concerned I will not give the citations.

Reg. v. Ipswich Union.
(1877) 2 Q.B.D. 269,
46 L.J.M.C. 207,

Cockburn C. J. at page: 270:

"It is a general rule that where a statute is passed altering the law, unless the language is expressly to the contrary, it is to be taken as intended to apply to a state of facts coming into existence after the Act."

Cited with approval by Stuart J. A. who delivered the unanimous judgment of the Alberta Appellate Division in:

Hoppe v. C. P. R.
(1922) 17 Alta. L. R. 231 at 235.

Schmidt v. Ritz.
(1901) 31 S.C.R. 603,

Strong, C. J. at page 605:

"The well known rule that retrospective statutes, especially such as divest vested rights, are to receive a restrictive construction is too well established to permit any larger interpretation than that which I attribute to the words according to their strict grammatical construction."

MR. STEER: It may be that some of us will want to refer to these cases and I suggest it will not take a second for my learned friend to give us the volume in which we can find it for ourselves.

MR. CHAMBERS: Then I will cite:

Hoppe v. C. P. R.
(1922) 17 Alta. L. R. 231 at 235.

Schmidt v. Ritz.
(1901) 31 S.C.R. 603,

Strong, C. J. at page 605:

MR. HARVIE: Mr. Chambers, I am just wondering if it might not simplify the matter if the Court Reporters could run those off and let us have them after they have been referred to.

MR. CHAMBERS: It will not take very long.

MR. STEER: My suggestion is that my friend give us the volume and we can look it up.

MR. CHAMBERS: Very well.

Spooner Oils Ltd. et al vs. The Turner Valley Gas Conservation Board et al.
(1933) S.C.R. 629.

Duff, C. J. who delivered the judgment of the court states at page 638:

"The appropriate rule of construction has been formulated and applied many times. A legislative enactment is not to be read as prejudicially affecting accrued rights, or 'an existing status'.....unless the language in which it is

expressed requires such a construction.....the underlying assumption being that, when Parliament intends prejudicially to affect such rights or such a status, it declares its intention expressly, unless, at all events, that intention is plainly manifested by unavoidable inference."

Re Raison,
(1891) 60 L.J. Q.B. 206.

Cave J. at page 207:

"This conclusion is in accordance with the old maxim that legislation, unless there be some special provision to that effect, is not retrospective."

And now I am going to cite certain other cases for the purposes of the record:

Main v. Stark,
(1880) 15 A.C. 384 at 388.

Can. Nor. Ry. v. the King,
(1922) 64 S.C.R. 264,

Affirmed 93 L.J:P.C. 18,

Toronto General Trusts Corp. v. Gooderham.
(1936) S.C.R. 149 at 161-2.

Western Counties Ry. Co. v. Windsor and Annapolis Ry. Co.
(1882) 7 A.C. 178 at 189 (P.C.)
51 L.J.P.C. 43.

Toronto v. Presswood Bros.
(1944) O.R. 145 (C.A.)

Rex. v. Hayward,
(1940) 14 M.P.R. 486 (N.B.C.A.)

Section 67 is the only section or provision of the statute which specifically authorizes the Board to interfere with existing contracts or vested rights.

In that regard I refer to Colonial Sugar Refining Company v. Melbourne Harbour Commissioners, (1927) 96 L.J.P.C. 74, and Lord Warrington at page 82 says:-

" The Board is guided by the well-known principle that a statute should not be held to take away private rights of property without compensation unless the intention to do so is expressed in clear and unambiguous terms."

Bond v. Norman, (1940) 2 All England Reports, 12 (C.A.) where Greene, Master of the Rolls, at page 15 says:-

" In dealing with a matter of this kind, it is legitimate - and, in fact, necessary - to consider the consequences of the one construction of the Act of Parliament and of the other construction, for the purpose of seeing whether or not one of those constructions runs counter to certain principles which the legislature prima facie is supposed to follow. The most relevant consideration in this particular case is that which was stated in a well known passage by Sir William Brett, Master of the Rolls, in the Court of Appeal in Attorney General v. Horner (1) at p. 257, which is quoted by Simonds J., in his judgment, at p. 671:

.....it is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights without compensation, unless one is obliged to so construe it."

And then again at page 17:

" I mention these matters because it seems to me

"that, if the appellants' construction is right, they do form an aggravation of the simple case of taking away property without compensation, because they mean that the process of taking away that property (or compelling the owner at his own expense to preserve it) without compensation shows, when compared with the other provisions of the Act, a complete inconsistency for which no reasons can be suggested."

THE CHAIRMAN: All of those cases, Mr. Chambers, were cases between individuals, I take it?

MR. CHAMBERS: No sir. I think the Bond and the Norman case, I am going to deal with later the Newcastle Breweries case, is the question of Government regulations and interference.

THE CHAIRMAN: But are there introduced in it questions of public interest and collective rights, those have arisen, and those rights have arisen since the dates of the cases that you are quoting.

MR. CHAMBERS: No sir, my submissionis this, on that authority that public interest or no public interest, when the Legislature as a matter of policy passes an Act which does interfere with personal freedom of action, that in construing and in applying the Act the Legislature must have, unless it is said very definitely to the contrary, these principles of compensation must apply with full force, just the same as in the case where you have an Act taking away people's property. Where the Government wants to use that property, they provide for full compensation. And what I am, in fact, quoting these cases for is this, true the Legislature in this Natural Gas Utilities Act has stepped

in and interfered with the rights of parties, but in applying the powers laid down for the working out of the scheme and for the fixing of prices the Legislature intended, they would not do it retroactively first, and secondly, they meant by the use of the words "just and reasonable" to see that full compensation should be given. In other words, Sir, what I submit that though this statute was passed in the public interest, that that does not change the application of these basic principles.

THE CHAIRMAN: May it not introduce or cause the introduction into our law principles that would not apply as between two individuals on the consturcion of the statute?

MR. CHAMBERS: Sir, I submit no, with greater force, unless they go out of their way to make it very clear that you must lean backwards to see there is just compensation. Now, if the Legislature, as a matter of policy, was to change that rule , it is for them to say so.

THE CHAIRMAN: Your rule of compensation .....

MR.CHAMBERS: Pardon?

THE CHAIRMAN: Your rule of compensation or your quantum of compensation might be different between two individuals from that which might be applied when you have collective rights coming into the picture.

MR. CHAMBERS: Well, no sir, I do not think I can go that far, I mean, in my submission.

THE CHAIRMAN: I am only trying to explore the question, Mr. Chambers.

MR. CHAMBERS: No. I say this, when you pass legislation in the public interest that is legislation in the same category as where the state, as a matter of policy, decide they want my property as their property for some

specific use.

THE CHAIRMAN: In that case they have to pay you, unless the statute says they do not have to.

MR. CHAMBERS: That is right.

THE CHAIRMAN: Quite.

MR. CHAMBERS: And I say in bringing in the regulation or applying the regulation, the same basic principles apply, with the ceiling of reasonableness that I will talk about later.

In the Newcastle Breweries Limited, v. Regem, (1920) 89 L.J.K.B. 392, and I am quoting from the judgment of Salter J. at page 396, and this was a regulation,-

" The remaining part of the Regulation deals with payment. It deprives the owner of his statutory right to the fair market value and it directs in effect that the sum to be paid shall be based on the cost price and not on the market price of the goods to be acquired. It is plain that this provision may deprive the subject of part (and not improbably a large part) of the sum to which he was entitled by statute, and that it authorizes for an indefinite time the taking by the Crown of the subject's goods without payment of the pecuniary equivalent at the time of requisition. It is an established rule that a statute will not be read as authorizing the taking of a subject's goods without payment unless an intention to do so be clearly expressed. This rule must apply no less to partial than to total confiscation, and it must apply a fortiori to the construction of a statute delegating legislative powers."

And that is in essence, the principles, I submit, should be applied here.

Now in the next place I say this that earnings, profits or accounting practices prior to March 24th, 1944, prior to this legislation being enacted, cannot, under the statute, as I see it, affect in any way Rates, Prices or Charges thereafter to be fixed or charged.

I refer first of all to a well known case, Western Counties Railway Company v. Windsor and Annapolic Railway Company, (1882) 7 A.C. 178, (P.C.), 51 L.J. P.C. 43, an apeal from this country, and Lord Watson, at page 48 uses these words:-

" The canon of construction applicable to such a statute"

and this is the statute of taking the railroad away, and taking it over from one company to another by reason of alleged default,

"is that it must not be deemed to take away or extinguish the right of the respondent company, unless it appear by express words or by plain implication, that it was the intention of the legislature to do so.....The enunciation of the principle is, no doubt, much easier than its application. Thus far, however, the law appears to be plain - that it is not sufficient to show that the thing sanctioned by the Act, will of sheer physical necessity put an end to the right; it must also be shown that the Legislature have authorized the thing to be done, at all events, and irrespective of its possible

"interference with existing rights."

And then I refer to Re Pulborough Parish School Board. (1894) 1 Q.B. 725, 63 L.J. Q.B. 497(C.A.), in England, where Lopes, L.J. at page 501 says this:

> "Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws.....must be presumed to be intended not to have a retrospective effect."

And then I also refer to Public Works Commissioner v. Logan, (1903) A.C. 355, 72 L.J.P.C. 91, which also is on the matter of taking away property without full compensation, and the Newcastle Breweries case is authority for the proposition I have just put that business of money made or lost has no application in fixing the new rate here. It is a sound canon of construction that an intention to take away property without compensation should not be imputed to a Legislature unless it is expressed in unequivocal terms.

Newcastle Breweries Ltd. v. Regim.
(1920) 1 K.B. 854,
89 L.J.K.B. 392,

(See 2(a) supra)

And in the next case I refer to

Wandsworth Board of Works v. United Telephone Co.
(1884) 13 Q.B.D. 904;
53 L.J.Q.B. 449 (C.A.),

where Bowen L.J. at page 457 says:

> "....if there are two possible constructions of the words so considered, we ought, I think, to adopt that construction which is based on the theory that the Legislature only gave

> "such powers to enable the local authority to carry out the objects of the statute, and that we ought not to presume that the Legislature intended to confer upon the local authority any larger powers than were necessary."

And then there is the well-known case in the United States Supreme Court of Newton V. Consolidated Gas Co. (1922) 258 U.S. 165, 55 L.ed. 538, where McReynolds, J. at page 548 says:

> "Since 1907 the Gas Company hasbeen subject to supervision by a Commission empowered to prohibit unreasonable rates and the presumption is that any profits from its business were lawfully acquired."

Now, I say here while we were not under regulation in the past, that any property acquired must be presumed to be done in accordance with the law, and to be legally acquired.

> "Municipal Gas Company v. Public Service Commission, 225 N.Y. 89, 99. Mere past success could not support a demand that it continue to operate indefinitely at a loss. The public has no such right in respect of private property although dedicated to public use. When it became clear that the prescribed rate had yielded no fair return for more than a year and that this condition would almost certainly continue for many months the company was clearly entitled to relief."

And then I also refer to the more recent case in the Pennsylvanis Supreme Court of Peoples Natural Gas Company v. Pennsylvania Public Utilities Commission (1944) 51 P.U.R. (N.S.) 129

(Pa. S.C.) where Kenworthy J., at page 137 refers to the fact that the company, whose rates were under consideration, had throughout its history paid substantial dividends and built up its properties by plowing back past surpluses and that that was, and then he says this:-

> "strong evidence that, at least, during the early years of its life, its earnings and perhaps its rates, were unreasonably high. But this is not a proceeding to determine the reasonableness of the rates of the appellant between 1885 and 1913..... The vague feeling that there may have been a past wrong we would to right does not, in our opinion, furnish an adequate basis for taking property from the present owner and giving it to someone else.
>
> The fact that it may have earned excessive returns in the past has no bearing whatever on what, under present-day regulatory procedure, it is entitled to earn on the basis of the fair value of the property presently dedicated to the public use."

(Go to page 6537.).

Now the next principle I intend to deal with is that which I submit is applicable to the wide discretionary powers that are conferred on your Board, sir, by this Act. Now I say first of all that although the powers of your Board are, in most instances, conferred by words whose natural meaning is permissive and enabling only ("may" - and "shall have the power") there is nevertheless a duty on the Board, as the circumstances arise, to exercise its powers. I am not suggesting any diffidence or any reluctance of the Board but I thought in dealing with this whole picture I should sketch quite briefly the general principles that I think are applicable. And I again quote or refer to:

Julius v. Bishop of Oxford.
(1880) 5 A.C. 214 (H. of L.) and
49 L.J.Q.B. 577.

Lord Selborne, at page 589 said this:

> "When a statute confers an authority to do a judicial act it is imperative on those so authorized to exercise the authority when the case arises and its exercise is duly applied for by a party interested and having the right to make the application."

Then to the same effect is a case in the United States:

Supervisors v. U.S.
(71 U.S. 435)

> "Whenever public interests or individual rights call for the exercise of power given to public officers, the language used, though permissive in form, is in fact peremptory; what they are empowered to do for a third person, the law requires shall be done."

See also to the same effect:

Sheffield Corporation v. Luxford.
(1929) 98 L.J.K.B. 512 (Salter J.)

Re North Huron Election.
(1926) 58 O.L.R. 197 (C.A.)

Fonesia v. Schultz.
7 Man. R. 435.

Rex v. Metropolitan Police Commissioner.
(1912) 81 L.J.K.B. 205 (C.A.)

Now on the question of discretion. I say first of all that where a statute gives to a tribunal discretionary powers, the discretion cannot (in the absence of clear, specific and unambiguous words to the contrary,) be arbitrarily exercised but must be based on reason and justice. When I use the word "arbitrarily" I do not intend to imply any perverse connotation unless there is some - well, as a distinction to arbitrary there must be reason and logic behind it as a means of arriving at a decision.

It is to be observed that the legislature has, by The Natural Gas Utilities Act, made it abundantly clear that the Board's rulings and price fixing powers are not to be arbitrarily made but are to be based on reason and justice. That is my submission of what these words "just and reasonable" mean. And in that regard I refer to sections 44, 50,52, 72 and 74.

I would like to deal with the Pioneer Laundry & Dry Cleaners Limited v. Minister of National Revenue, (1939) 3 W.W.R. 567 (P.C.)
Section 5 of the Income War Tax Act, as it then stood, provided that "income" as thereinbefore defined should,

for the purposes of the statute, be subject to an exemption or deduction for - and these are the exact words -

"such reasonable amount as the minister, in his discretion, may allow for depreciation....."

Now Lord Thankerton quotes these words with approval from the judgment of Mr. Justice Davis in the Supreme Court below:

"The appellant was entitled to an exemption or deduction in 'such reasonable amount as the Minister, in his discretion, may allow for depreciation'. That involved, in my opinion, an administrative duty of a quasi-judicial character - a discretion to be exercised on proper legal principles."

That quotation was recently used and applied in a more recent case in the Supreme Court of Canada to which I will refer presently.

The next case I desire to refer to is Sharpe v. Wakefield, (1891) A.C. 173 at 179, and 60 L.J.M.C. 73 (H. of L.).

By statute the grant of licenses was within the discretion of the magistrates.

Now Lord Chancellor Halsbury uses these words at page 76:

"an extensive power is confided to the justices in their capacity as justices to be exercised judicially, and discretion means, when it is said something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not to private opinion - according to law and not humour. It is to be not arbitrary,

"vague and fanciful, but legal and regular, and it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself."

I admit at once, sir, that the application of those is a matter of some difficulty.

Now I will deal with a recent decision of the Supreme Court of Canada:

Wright's Canadian Ropes Limited v. Minister of National Revenue. The citation I have is 1946 Canadian Tax Cases, at page 73. I think it has recently appeared in the Supreme Court of Canada Reports. Now Section 6(2) of The Income War Tax Act provides that the Minister of National Revenue, in respect of taxable incomes - and these are the words -

"may disallow any expense which he in his discretion may determine to be in excess of what is reasonable or normal for the business carried on by the taxpayer, or which was incurred in respect of any transaction or operation which in his opinion has unduly or artificially reduced the income."

Now the Court held that the discretion to be so exercised is a judicial discretion.

I am coming back to that case but for a moment I would like to refer to an old decision, Leader v. Moxon et al, as far back as 1773 reported in 96 English Reprints at page 546, Court of Appeal.

The statute empowered the commissioners, at the request of two-thirds of the householders, to pave streets as they should think fit. In carrying out such

paving, they raised the footway continguos to the plaintiff's houses by 6 feet, but by a regular descent, so that the view from the houses was obstructed.

The Court held that the commissioners had grossly exceeded their powers, which must have a reasonable construction. Their discretion is not arbitrary but must be limited by law and reason.

Now then I come to an examination of what those requisites are of a judicial or quasi-judicial discretion and I list them in my submission as follows:-

(i) the tribunal must act bona fide,

(ii) it must listen fairly to both sides,

(iii) it must appraise an interested party of all information or statements affecting him and give him an opportunity to correct or contradict such information,

(iv) it must not take into account matters which the Courts consider not to be proper for the guidance of their discretion,

I submit that is a difficult one too, sir, to know what the limits are.

(v) it must act in accordance with fundamental legal principles,

(vi) it must act on the evidence before it,

(vii) it must make known or give the reasons or basis for its decisions.

Now first it must act bona fide. That is self evident. There is no point in that here. I am not suggesting that for a moment but as I say, to make a comprehensive analysis, I have made notes of certain cases

and the cases that I refer to are:

Lower Mainland Dairy Products Board v. Turners Dairy Ltd. (1941) S.C.R. 573.

Galloway v. Corporation of London, (1864) 2 De G.J. & S. 213, 46 E.R. 356 at 363,

Secondly, they must hear both sides.

MR. STEER: No doubt that has been done.

MR. CHAMBERS: I am only stressing that for this reason. I agree with my learned friend Mr. Steer, but there was some discussion during the Hearing as to what was said by, I think it was Mr. Justice Lamont in the Northwestern Utilities case and I propose to analyze that case. Something might come whereby it might have a bearing. In other words, my submission is this that every opinion, authority on which the Board proposes to act to base its decision must, before it is used, and its decision writtenhas commuhicated to all parties who are entitled to make representations with respect to it. I will advert to that as I go along. Now Board of Education v. Rice, 1911, Appeal Cases 179, House of Lords, and 89 L.J.K.B. 796. Lord Loreburn - and he is talking about a regulatory board here or an administrative board - at page 798 says:

> "They must act in good faith and fairly listen to both sides for that is a duty lying upon every one who decides anything."

Now thirdly, must appraise an interested party of statements or information affecting him and give him an opportunity to meet it. I again refer to Lord Loreburn in the Board of Education case, with reference to the Board of Education under the statute there in question,

and he states this:

> "but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial."

And then these are words which in my submission distinguish the Board of Education, they are administering certain things, from your Board, sir.

> "They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

Now then I come back to Wrights' Canadian Ropes Limited vs Minister of Internal Revenue, (1946) Canadian Tax Cases 73 (S.C. Can.) and Mr. Justice Kellock, he is referring to that section of the Income Tax Act, at pages 95 and 96, said:

> "In my opinion, therefore, the appellant was entitled to have produced to him before the assessments were made, the report in question and to have an opportunity to meet whatever it contained."

The minister in that case had gotten a report from one of his local men and he acted on that

and the taxpayer did not know a thing about it.

Then I also in that connection refer to the judgment of Mr. Justice Estey at page 105.

Then I turn for a moment to another case in the Supreme Court of Canada, 1942, at page 178, and that is The King v. Noxzema Chemical Company of Canada Limited. Davis J. at page 180 said:

> "if.....the function of the Minister under the section may be said to be of a quasi-judicial nature, even then all that was necessary was that the taxpayer be given a fair opportunity to be heard in the controversy; and to correct or contradict any relevant statement prejudicial to his interests."

Then I deal with Errington v. Minister of Health, (1935) 1 K.B. 249 (C.A.) and 104 L.J.K.B. 49, Greer, L. J. at pages 55 and 56:

> "Now it seems to me that if, as I think, the Ministry were acting in a quasi-judicial capacity, they were doing what a semi-judicial body cannot do, - namely, hearing evidence from one side in the absence of the other side, and viewing the property and forming their own views about it without giving the owners the opportunity of arguing that the views which they were inclined to take were such as could be readily dealt with by means of repairs and alterations to the buildings."

And then the remarks of Lord Justice Maughan and Mr. Justice Roche are to the same effect, at pages 59, 60, 61 and 62.

Now then I would like to refer briefly to this Northwestern Utilities case, it is reported in (1929) S.C.R. at page 186, where Mr. Justice Lamont, with whom the present Chief Justice Rinfret, then Mr. Justice Rinfret, concurred, expressed the view at page 194 that the city, having put in issue the question of the rate of return and no evidence having been adduced, the Board could have sent its secretary privately to inquire of financial institutions as to the condition of the money market, - now while that is said by Mr. Justice Lamont and concurred in by Chief Justice Rinfret, yet it will be observed that Mr. Justice Smith, I have "Smith" there but I think that must be incorrect.

MR. STEER: No, it is Mr. Justice Smith.

MR. CHAMBERS: It is to be observed that Mr. Justice Smith with whom Chief Justice Anglin and Mr. Justice Mignault concurred, says this, at pages 199 and 200:

> " I am not entirely in accord with the observations of my brother Lamont in reference to the sending out of someone to gather evidence of the state of the money market and acting on that party's report without the knowledge of the company."

And then he goes on to state at pages 199 and 200:

> " The objection in such a case would not be the failure to set out in the award the fact of such evidence and its nature, but the failure to disclose

"it to the company with an opportunity to answer it. If it were a case where, evidence being necessary, it had been taken in the manner suggested, or otherwise, and a finding based on it without disclosure of it to the company and an opportunity to answer it, I would regard such a proceeding as contrary to elementary principles of natural justice, and as affording, under the statute, a ground for setting the award as to this item aside and referring it back for reconsideration. It does not, however, appear that any evidence was taken, and as stated, I have concluded that there was power to make the change without evidence."

In other words, I submit, sir, while Mr. Justice Lamont expressed those views, that the majority of the court did not agree with him.

THE CHAIRMAN: Does it not only go this far that if you do you should and are liable to be asked to disclose the information you have obtained to the interested party and give him an opportunity to meet it.

MR. CHAMBERS: That is it exactly, sir.

Now then the next principle which I enunciate is that the Board, in exercising its discretion, must not take into account improper matters in the sense that a Court will sometimes permit and take into account improper matters and I refer back for the moment to the Pioneer Laundry and Dry Cleaners Limited vs M.I.R. case, reported in 1939, 3 W.W.R. at page 567, where Lord Thankerton, at pages 572 and 573, said this:

"Their Lordships agree with the Chief Justice and

"Davis J., that the reason given for the decision was not a proper ground for the exercise of the Minister's discretion, and that he was not entitled, in the absence of fraud or improper conduct, to disregard the separate legal existence of the appellant company, and to enquire as to who its shareholders were, and its relations to its predecessors. The taxpayer is the company, and not its shareholders. Their Lordships agree with the reasons given by these learned Judges, and their application of the authorities cited by them, and it is unnecessary to repeat them."

And then to the same effect, there is the case of The Queen v. Vestry of St. Pancras, (1890) 24 Q.B.D. 371; 59 L.J.Q.B. 244, where Lord Esher at page 375 said:

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

And the next principle was that this discretion must be exercised in accordance with legal principles, and I say that means this:

That the Board in carrying out its discretionary powers is bound and governed by the legal principles of interpretation of the statute itself, namely:

(a) the statute is not confiscatory

(b) the statute is not retroactive

(c) it cannot make confiscatory orders but rather

" its price fixing orders must afford full compensation.

(d) its orders cannot be retroactive except insofar as the statute specifically authorizes them,

(e) it cannot do indirectly what it is precluded from doing directly;

And as to these matters I have already referred to them.

And then of course one of the main legal principles which must be kept in mind is that the decision of the Board must not effect discrimination either directly or indirectly.

Now the Board must act on the evidence before it and not on mere conjecture and I want to bring that out because some of the witnesses leave a suggestion as a basis for certain Orders of the Board on what I submit is conjecture pure and simple and in that sense I refer to the case of the Royalite Oil Company Limited v. Major Oils, (1941) 3 W.W.R. 18, where Chief Justice Harvey says this at page 21:

"It is of course a question of fact whether there is a delivery direct or indirect to the public, but it is a question of law whether there is any evidence from which such fact can be found."

And then going back to the Wrights' Canadian Ropes case, Mr. Justice Kellock again refers to the Pioneer Laundry case, at page 98, and points out that it was there held that while the duty of the minister, to fix a reasonable amount for depreciation, was purely administrative it still,

"required the Minister to give effect to the evidence before him in accordance with relevant legal principles",

And then he goes on to say at page 100:

"Therefore, where there is nothing before the Court which enables it to see any ground or principle upon which the decision appealed from can be supported, but on the contrary where the evidence substantiates the deduction claimed and therefore the decision appears as a purely arbitrary one, which the statute does not permit, the appellant, ih my opinion, has met the onus resting upon it of showing that the exercise of discretion involved has been 'manifestly against sound and fundamental principles' or based upon 'wrong principles of law'".

In other words what I submit is this, that the wide discretion which this Board has to exercise under this statute, must be based upon what appears on this record.

And the other principle which has been brought to the fore by the recent decision of the Supreme Court of Canada in the Wrights' case is this: That the Board must make known or give the reasons or basis for its decision.

In the Wright's case, Mr. Justice Hudson said this, at page 90:

"The ruling of the Minister does not disclose any reasons. No doubt he had what appeared to him perfectly sound reasons for his decision, but none are before us. It is not for the court to

"weigh the reasons but we are entitled to know what they are, so that we may decide whether or not they are based on sound and fundamental principles."

And then Mr. Justice Kellock, at page 100, said this:

"The ground of decision, therefore' that is the Board's decision, -

'is unexplained and the decision itself is made to appear as a purely arbitrary one."

And Mr. Justice Estey expressed an opinion to the same effect at page 104.

Now then . . . . .

THE CHAIRMAN: Doss that mean, Mr. Chambers, that I cannot use the phrase which the Judges use, "After having given the matter the best consideration of which I am capable, I" - and then proceed to make my award?

MR. CHAMBERS: In my submission, not.

Now then what is the meaning of this term "just and reasonable" which appears throughout our Act, and frankly I do not pretend to give you, sir, the definitions or limitations of what is meant by the term but I do think by referring to certain proceedings, it might be of some assistance to you.

And I refer first of all to the case of Kruse v. Johnson, (1898) 67 L.J.Q.B. 783, and there the question was whether a municipal bylaw was unreasonable. Lord Russell of Killawen at page 784 said this:

"It is necessary.....to see what is the authority under which the bylaw in question has been made and what are the relations between its framers and those

"affected by it..... A bylaw of the class we are here considering I take to be an ordinance affecting the public or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the bylaw, they would be free to do as they pleased."

Now I submit that those words are descriptive of the Board's orders and powers.

Then Lord Russell points out that, with reference to the particular bylaw there in question, there were additional safeguards in that it required to have, and did in fact have, the approval of two thirds of the council and also of the local Government Board and did not become effective until 40 days after it had been filed with the Secretary of State who could disallow it.

That particular bylaw had all those safeguards.

Then however he goes on and says at pages 785 and 786:

"I think Courts of Justice ought to be slow to condemn as invalid any bylaw so made under such conditions on the grounds of supposed unreasonableness .....I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn bylaws made under such authority as these were made as invalid because unreasonable. But

"unreasonable in what sense? If, for instance, they were found to be partial and unequal in their operation as between different classes, if they were manifestly unjust, if they disclosed bad faith, if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men....."

I do not know, however, whether that carries us much further but that is what they say.

And then there is a decision in 1906, 10 Exchequer Court at page 224, and the same case is also reported in 37 S.C.R. at page 651, the case of Copeland-Chatterton Co. v. Hatton, a case where section 37 of the Patents Act, Chapter 61, R.S.C., provided that the patentee must, within a specified time after the grant of the patent, manufacture the invention patented in such a manner that any person desiring to use it, - and this is the wording of the statute:-

"may obtain it, or cause it to be made for him, at a reasonable price".

Now all that I could gather from the case was that the Court held that the "reasonable price" mentioned in the statute meant a "reasonable price in money".

Now then I would like to refer to a case which has been mentioned frequently throughout this Hearing and my submission is this, that this case is still the law in this country, notwithstanding the fact that regulation has been instituted by statutes of the various Provinces and not withstanding all that has been said by the Supreme Court of Canada, and that is the case of

Canada's Southern Railway Company vs International Bridge Company, reported in (1883) L.R. 8 A.C. 723 (P.C.) And the question there was whether tolls, exacted by a bridge company under a statute giving it power to impose them, were reasonable, and this is what Lord Selborne states at pages 731 and 732, and I say this case is applicable as a test of its "reasonableness":

"It certainly appears to their Lordships that the principle must be, when reasonableness comes in question, not what profit it may be reasonable for a company to make, but what it is reasonable to charge to the person who is charged. That is the only thing he is concerned with. They do not say that the case may not be imagined of the results to a company being so enormously disproportionate to the money laid out upon the undertaking as to make that of itself possibly some evidence that the charge is unreasonable, with reference to the person against whom it is charged. But that is merely imaginary. Here we have got a perfectly reasonable scale of charges in everything, which is to be regarded as material to the person against whom the charge is made. One of their Lordships asked Counsel at the bar to point out which of these charges were unreasonable. It was not found possible to do so. In point of fact, every one of them seems to be, when examined with reference to the service rendered and the benefit to the person receiving that service, perfectly unexceptionable, according to any standard of reasonableness which can be suggested. That being so it seems to their Lordships that it would be a very extraordinary thing indeed, unless the Legislature had expressly said

so, to hold that the persons using the bridge could claim a right to take the whole accounts of the company, to dissect their capital account, and to dissect their income account, to allow this item and dis-allow that, and, after manipulating the accounts in their own way, to ask a Court to say that the persons who have projected such an undertaking as this, who have encountered all the original risks of executing it, who are still subject to the risks which from natural and other causes every such undertaking is subject to, and who may possibly, as in the case alluded to by the learned Judge in the Court below, the case of the Tay Bridge, have the whole thing swept away in a moment, are to be regarded as making unreasonable charges, not because it is otherwise than fair for the railway company using the bridge to pay those charges, but because the bridge company gets a dividend which is alleged to amount, at the utmost, to 15 per cent. Their Lordships can hardly characterize that argument as anything less than preposterous."

Now I frankly admit that our legislation has also the power and has provided that the Board shall dissect the accounts of the company and that I say deals more with the question of just, but I am talking about this ceiling arrangement and I think the sense in which Lord Selborne uses it in the Canada Southern case is of particular importance when the Board, as it will have to, when it comes to consider any price I might fix becoming unreasonable assuming that the returns and so on to the utilities are within the range of what is just.

And I also refer to:

Argument by Mr. Chambers.

Pickford et al v. Grand Junction Ry. Co.
(1842) 10 M. & W. 399 (C.A.)
152 E.R. 525.

By sec. 156 of ch. 34 of 3 & 4 Wm. 4th, the railway company was authorized to carry and convey on its railway all such passengers, goods and merchandise as should be offered to it for such purpose and to make such reasonable charges for the same as it might from time to time determine.

The question was whether for two hampers containing small parcels consigned to different persons it was reasonable to charge either for each parcel contained in the hamper separately or one penny per pound on the gross weight of each hamper and its contents.

Baron Parke who delivered the judgment of the Court states at pages 535 and 536:

"The charge is no doubt to be varied according to the trouble, expense and responsibility attending the receipt, carriage and delivery of different articles; and for small parcels more ought to be paid than a proportionate part, according to weight, of the price of larger parcels of the same commodity, by reason of the greater trouble in receiving, despatching and delivering them, and their exposure to a much greater risk of abstraction or loss."

And also the case of:

Rickett Smith & Co. Ltd. v. Midland Ry. Co.
(1896) 1 Q.B. 260 (Ry. & Canal Comm.)
65 L.J.Q.B. 274.

Collins J. at page 277 quotes the above underlined words from the judgment of Baron Parke in the Pickford Case and then states:

"The affluence or indigence of the person rendering or receiving the service is beside the question. The

reasonableness of the charge must be measured by reference 'to the service rendered and the benefit received.'"

He quotes in support the judgment of Lord Selborne in the Canada Southern Case, supra, and then concludes at pages 277 and 278:

"I think, therefore, that the reasonableness of the rate is not to be tried by its effect upon the trade of the persons who have to pay it."

Then I refer to a decision of the Court of Appeal of New Brunswick.

P.U. Commissioners v. Maritime Electric Co.
(1935) 1 D.L.R. 456 (N.B. C.A.)

The N. B. Public Utilities Act, chapter 127, R.S.N.B. 1927 provides that:

(sec.6) "upon complaint....that any rate.....is in any respect unreasonable.....the board shall proceed to make .....investigation.....and may order such rate..... reduced, modified or altered as the justice of the case may require....."

(sec. 10) ".....all charges made by a public utility shall be reasonable and just, and every unjust or unreasonable charge is prohibited and declared unlawful."

The Court referred to the Canada Southern Case, supra, and Baxter J., now Chief Justice, who delivered the majority judgment of the Court, at page 459 states:

"The value of the property when found and by whatever rule or method it is ascertained, is only one of the elements in deciding whether a rate is or is not reasonable."

"The office of the Commission is not to find the smallest possible cost at which service may be rendered to the consumer and fix the rates to be charged on that basis.

Their investigation should be limited to ascertaining whether the return to the utility is so large as to indicate that the rates which produce the return must be excessive."

Then I refer to the case of:

Allnut et al v. Inglis.
(1810) 12 East 527 (C.A.)
104 E.R. 206.

Lord Ellenborough, C. J. at pages 206 and 207:

"There is no doubt that the general principle is favored, both in law and justice, that every man may fix what price he pleases upon his own property or the use of it; but if for a particular purpose the public have a right to resort to his premises and make use of them, and if he have a monopoly in them for that purpose, if he will take the benefit of that monopoly, he must as an equivalent perform the duty attached to it on reasonable terms."

Le Blanc J. at page 212:

"But though this be private property, yet the principle laid down by Lord Hale attached upon it, that when private property is affected with a public interest, it ceases to be juris privati only; and, in case of its dedication to such a purpose as this, the owners cannot take arbitrary and excessive duties, but the duties must be reasonable."

Now that decision was also referred to and quoted I think by the McGillivray Commission in its Pipeline report and I would like now to refer to an extract from the McGillivray Commission report on the Valley Pipeline.

(The foregoing were quoted with approval in the report of the McGillivray Commission on pipe line matters - pages 3 and 4)

The McGillivray Report states at page 6:

"Our concept of our duty is to try to arrive at a rate to be recommended which will provide to the owners a fair return upon the value of an efficient and economical system which is put to public use and which will at the same time be such as to insure to the public that no more is required to be paid for the service rendered than that service is reasonably worth."

Now I submit, sir, that the word "reasonable" as used in this and throughout the statute means that that has to be gauged to some extent at least by the value of the service to the person who gets it. That is the ceiling but that the word "reasonable" also has a connotation not only as between the parties served and the utility but that this word "reasonable" is just as important when you come to allocate the revenues which the Utility Company requires as between the different classes of customers. In other words that question of reasonable is just as important as between the different classes of the consumers.

Now I refer also to:

Loxton v. Ryan.
(1921) Queensland State Reports 79.

A building contract provided that the architect should be the sole judge of all matters arising out of the contract, so far as related to quality of materials and workmanship, the interpretation of plans, the rate of progress and general management of the works, and "against his decision, providing it be just and impartial, there shall be no appeal."

Now, Mr. Justice Lukin states this:

at page 88:

"I cannot accept the plaintiff's interpretation of the

word 'just' in this clause as meaning simply honesty in the architect. What is required is that the decision shall be just, which I take to mean that his decision shall be right and fair, having reasonable and adequate grounds to support it and conformable to a standard of what is proper and right."

And then I notice in -

35 Corpus Juris 431 and 432:

States that the word "just"

"has been defined variously as meaning adequate, comformable to laws, conformed to rules or principles of justice .....in accordance with law and justice....."

Then I would like to quote from the book of Wilson Herring & Eutsler, and by the way I have that book and would be glad to let you have it if you wish, sir. It was used on this Hearing and also I think on the McGillivray Commission.

Wilson Herring & Eutsler - Public Utility Regulation.

at page 95:

"The obligation of charging just and reasonable rates is an obligation to charge rates not above a maximum point set by the value of the service to the user and not below a minimum point set by the cost of producing the service. Within the zone between these two lies the area of reasonableness. Practically, therefore, a just and reasonable rate is one that returns to the utility an amount equal to, and usually greater than, the cost of producing the service and that provides the users a service at an amount not more than, and usually less than, the value of the service."

Now I say this, sir, that the decisions of the U. S. Supreme Court with respect to rates fixed under The Federal Natural Gas Act, 1938, are distinguishable in that they really deal with, and interpret, the particular terms of that statute, section 5 (a) of which provides that,

> "Whenever the Commission, after a hearing, shall find that any rate.....is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate.....and shall fix the same by order."

And then this proviso is the key to the whole situation in my submission:

> "Provided however.....the Commission may order a decrease where existing rates are unjust.....or are not the lowest reasonable rates."

Now I submit sir, that because the Congress of the United States passed that section because the Board set up under that Act see fits as a matter of policy in the United States to apply that Act so that in all cases they will fix the lowest reasonable rate, that that is no reason why aside from our statute that the Board should depart from the well established principles of what our Courts have in the past and in common law set out the limits of what is just and reasonable.

(Go to Page 6561)

Now in the F.P.C. Natural Gas Pipeline Company, (1942) 42 P.U.R. (N.S.) 129 (U.S.S.C.), Stone, Chief Justice, at page 137 points out that,

> "By long standing usage in the field of rate regulation, the 'lowest reasonable rate'"

he is quoting from the statute,

> "is one which is not confiscatory in the constitutional sense.....Assuming that there is a zone of reasonableness within which the Commission is free to fix a rate varying in amount and higher than a confiscatory rate.....the Commission is also free under sec. 5(a).....to decrease any rate which is not the 'lowest reasonable rate'. It follows that the congressional standard prescribed by the statute coincides with that of the constitution and that the courts are without authority under the statute to set aside as too low any 'reasonable rate' adopted by the Commission which is consistent with constitutional requirements."

Now, coming back to the New Brusnwick Court, In P.U. Comm. v. Maritime Electric Co. (1935) 1 D.L.R. 456 (N.B.C.A.), (pages 34 and 35 ante) Chief Justice Baxter states at page 460:

> "....it is enough to say that decisions of the Commission should be governed by the principles of the Canada Southern case, supra, (page 33 ante), rather than by the various United States authorities which are simply directed to an exposition of an article of the Federal Constitution of that country."

Argument by Mr. Chambers.

You will recall that the fifth amendment to the U.S. federal constitution, ratified in 1791, provides that,

> "no person shall....be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

And the fourteenth amendment, ratified in 1868, states that:

> ".....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law....."

Most state constitutions contain provisions similar to the above quoted fifth amendment.

Now, in dealing with the evidence I am going to argue the question of discrimination which will come up, and I submit that the Board has no power to fix or determine prices that are discriminatory unless expressly and specifically authorized by the Act so to do.

I refer first of all to the case of The Attorney General of Canada v. Toronto, (1892) 23 S.C.R. 514, and that statute empowered the city to construct and maintain a water system and provided that, and I am reading from the statute:-

> "the corporation shall regulate the distribution and use of water.....and from time to time shall fix the prices for the use thereof.....all of which they may change at their discretion.....and may fix the rate or rent to be paid for the useof the water by.....public buildings,"

Now, there the statute did not use the words "just and reasonable". That it only said it may do those things in their discretion.

It was also authorized to make bylaws for the management and conduct of the waterworks and for the collection of the water rents and also for allowing a discount for prepayment. The statute allowed them to do that.

The city passed a bylaw which provided:

> "All such half-yearly rates paid within the first two months of the half year for which they are due, shall be subject to a reduction of fifty percent, save and except in cases of government or other institutions which are exempt from city taxes, in which cases the said provisions shall not apply."

The Court held the bylaw invalid as the statute did not authorize or empower the city to discriminate.

And I refer to the judgment of Ritchie, Chief Justice, at pages 520, 521 and 524.

And then another early case, City of Hamilton v. Hamilton Distillery Co., (1906) 38 S.C.R. 239.

There statute there provided that the Board of Water Commissioners of the City

> "shall regulate the distribution and use of water.....and from time to time shall fix the prices for the use thereof and the times of payment",

and that,

> "the owner and occupier..... shall each be held liable for the payment of the price or rent fixed by the Commissioners for the use of the water by such occupier."

The water system was later by statute vested in the City as a corporation and all powers and authority of the Board vested in the city council.

The city passed a bylaw providing for a special increased water rate from certain industries.

The Court held the special rates invalid.

And then Davies, J. states at page 249:-

"I cannot, however, find in the special phrase quoted or in any other of the language used, anything which by any fair and reasonable construction could be held by implication to contain the power to discriminate as between manufactories in establishing the tariff of rents or rates."

And a still older case, Jonas v. Gilbert, (1881) 5 S.C.R. 356.

The Power of a public body to discriminate as between members of the public must be expressly authorized by law and cannot be inferred from general words.

And to that effect I quote Chief Justice Ritchie, at 365:-

"The intention of the legislature to confer the power of discrimination, must, I think, explicitly, and distinctly, appear by clear and unambiguous words."

See also page 366.

And I also refer to The King v. White et al (1931) 4 M.P.R., 220, (N.B.C.A.).

And then there is the case of Rex v. Paulowich (1940) 1 W.W.R. 537, Court of Appeal, Manitoba.

The statute authorized the municipal corporation to

pass bylaws, and I quote

> "for licensing, controlling and regulating all persons who sell goods.....within the corporation,"

and provided that, again I quote,-

> "a bylaw passed by a municipal corporation in the exercise of any of the powers conferred by..... this Act and in good faith shall not be open to question.....on account of the unreasonableness or supposed unreasonableness of its provisions or any of them."

Now, a municipal corporation passed a bylaw for licensing non-residents.

The Court held the bylaw, notwithstanding the statute, to be discriminatory and not authorized by the statute.

See also to the same effect:

Rex v. Pope
(1906) 4 W.L.R. 278 (C.A.) Harvey J. (now C.J.)

Forst v. Toronto
(1923) 54 O.L.R. 256 (C.A.)

Apex Auto Supply Co. v. Hamilton
(1925) 28 O.W.N. 265,

Rex v. Sparks,
(1913) 3 W.W.R. 1126 (B.C.)

Re Piric and Dundas,
(1869) 29 U.C.Q.B. 401 (C.A.)

Carleton Woolen Co. v. Woodstock
(1907) 38 S.C.R. 411.

Rex ex St. Joan v. Knott
(1944) 3 D.L.R. 726 (Ont. Rose C.J.)

See also section 74(2) of The Natural Gas Utilities Act, which I read this morning, which specifically prohibits the

proprietor of a pipeline who is a common carrier, and I submit that Madison is by virtue of Section 74(1) in that category, and I say that it prohibits the proprietor from either "directly or indrectly " making "any discrimination of any kind as between any of the persons for whom any natural gas is gathered or transported."

And then I also refer to what Maxwell states on the subject. In this regard reference is made to Maxwell on Interpretation of statutes, 7 ed. at pages 99 and 100, where it is stated:

> "It is the duty of a judge to adopt such a construction of a statute as shall avoid the possibility of any untruthful evasion which may perpetuate the mischief. To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined.....and a statute is understood as extending to all such circumstances, and rendering them unavailing."

Now, Sir, that concludes the general observations I have to make on the legislation, and the authorities, and I desire to deal briefly with the question of reserves. I do not propose to go through what each witness said as to the reserves, and I personally propose to rely on the final recommendation of Dr. Katz. I have it set out here in detail, and I do not propose to go into it in too much detail but I would like to have it go on the record if nobody has any objections.

MR.HARVIE: I think it is very useful to have it put on the record.

MR. CHAMBERS: I propose to start with Dr. Katz' final recommendation as far as my own case is concerned, but I thought I would just go over some of the evidence and the exhibits, with regard to what was said and so on.

THE CHAIRMAN: I am going to let all of you take all the time you want and deal with whatever subjects you wish, and in such detail as you see fit, so that no one will be able to say that I have been unreasonable.

MR.HARVIE: I did not mean to infer that I wanted you to read it into the record, Mr. Chambers.

MR. CHAMBERS: Then I will just run over those figures, and the reporter can put them in the record. May I first say that Part II of my argument deals with Reserves.

As the matter of natural gasreser ves (both in Turner Valley and elsewhere in the Province) is one that has a bearing on several phases of the subject matter of the hearing I propose to deal with the question at this stage of the argument.

Now, first of all, I deal with the Turner Valley Reserves. Now,Gordon A. Connell, in his report, Exhibit 44, which, as I understand it, was the basis of Dr. Katz' final recommendation, and that Exhibit 44 was calculated as at January 1st, 1944, the Turner Valley recoverable reserves served by the Madison system on two bases, namely:

(a) that if the crude oil wells were to be operated to whichever is the later of (i) 10 barrels per day, or (ii) an operating tubing pressure of 75 lbs. per square inch, and

(b) that if the crude oil wells were to be abandoned when their production should fall below 10

barrels per day.

In both cases he estimated the amount of gas which would be available if the gas cap wells were to be operated down to 100 lbs. per square inch bottom hole pressure.

On those bases he calculated the recoverable Turner Valley wet gas reserves, as at January 1st, 1944, to be (in billion cubic feet):

Crude Wells - A (75 lbs. or 10 bbls.)	Crude Wells - B (10 bbls.per day only)	GAS CAP (100 lbs.B.H.P.	Total A	Total B
290	187	301	591	488

And then you will recall that Mr. Stevens-Guille, in Exhibit 47, calculated that on the basis of Connell's estimate of 591 billion cubic feet of recoverable wet gas reserves- i.e., crude wells operated to the later of 10 bbls. per day or 75 lbs. tubing pressure) the available marketable residue gas reserves as at January 1st, 1944, were as follows:-

Total recoverable wet gas reserves	591 billion cu.Ft
Less flared and reserves still in formation at estimated end of operations	143.3 "
Marketable wet gas reserves	448.4 "
Loss for gasoline content and handling losses etc. (15%)	87.0
Dry gas reserves actually available for dry gas market	361.3 "

Then you also will recall in Exhibit 48, Mr.Stevens-Guille calculated that on the basis of Connell's estimate of 488 billion cubic feet of recoverable wet gas reserves, i. e. crude wells being abandoned when oil production falls below 10 barrels per day, the available marketable residue gas reserves as at January 1st, 1944, were as follows:-

Total recoverable wet gas reserves	487.4	billion cu.ft.
Less flared and not recovered for market	105.9	"
Marketable wet gas reserves	381.5	"
Less 22% for gasoline content and handling losses, etc.	70.4	"
Dry gas reserves actually available for dry gas market	311.1	"

In other words, that difference of 50 billion is due to the estimate on the basis of length of time that the crude oil wells would be operated.

And you will recall that in Exhibit 48 Mr. Stevens-Guille states this,

"in actual practice the probability"

this was his own view,

"is that the economic marketable reserves will be somewhere between the 311 and 361 billion cubic feet."

The following is a summary of the estimates made by the various petroleum engineers as to the Turner Valley marketable reserves as at January 1st, 1944:

	Wet Gas	Dry Gas
Katz, Ex. 34	401	298
Katz, Ex. 35	425.2	332.7
Davis, Ex. 38	467.5	371.0
Davies, Ex.40	457.9	325.6
Connell & Stevens Guille, Exs. 44 & 47	448.3	361.3
Connell & Stevens-Guille, Exs. 44 & 48	381.5	311.1
Average, omitting Ex. 34	434.1	340.3
Average, including Ex. 34	428.6	343.3

Now I come to Dr. Katz' final recommendation. After having perused and considered all the reports, Exhibits 34, 35, 38, 40, 44, 47 and 48, and having heard the evidence of all the engineers, Dr. Katz, as the engineer called on behalf of the Board, presented Exhibit 52 which was a comparison of all the estimates covered in the foregoing exhibits and gave as his recommendation that Exhibit 47, the report of Stevens-Guille, should be adopted.

And that was on the basis of the 361 billion.

See Exhibit 52, pages 2 and 6, Volume 16, pages 1304 to 1315, pages 1314 and 1316.

On that basis the 361.3 dry gas available for the market as of January 1st, 1944, is allotted or allocated by areas, as follows:-

B.A. Area:	Billion cu.ft.	Billion cu.ft.
Crude	23	
Gas cap	22.5	45.5
G.O.P. Area:		
Crude	8.6	
Gas Cap	14.4	23.0
Madison Area:		
Crude	114.8	
Gas Cap	178.00	292.8
Total all areas		361.3 billion cu.ft.

Total dry gas crude area	146.4	billion cu.ft.
Total dry gas gas cap area	214.9	"
	361.3	"

See Exhibit 50.

It is to be observed that the 361.3 billion cubic feet figure is the second highest estimate given by any of the 5

engineers and is also considerably higher than the average estimates.

Now, as I say, I am not quarrelling at all with that, but I say that is a fact that should be kept in mind.

(Go to page 6572.).

Now on the basis of 361.3 billion cubic feet as at January 1st, 1944 the comparable figures for January 1st, 1945 are 345.3 billion cubic feet. Again I show how I arrive at that from the exhibit:

	Billion cu.ft.	billion cu. ft.
B.A. Area:		
Crude	23	
Gas cap	22.5	45.5
G.O.P. Area:		
Crude	14.4	
Gas cap	8.6	23.0
Madison Area:		
Crude	107	
Gas cap	169.8	276.8
Total available dry gas for market Jan. 1st, 1945		345.3 bill.cu.ft.

Now then since Dr. Katz gave his evidence there was a revised estimate. The last revised estimate of the residue gas reserves available for the market as at January 1st, 1945 - and I am basing this on his letter of February 26th, 1946, circulated by Mr. A.G. Bailey of the Conservation Board to all parties following Dr. Katz' visit in February of 1946, and as I understand that letter to which no parties take exception shows that the residue gas reserves available for market as at January 1st, 1945 as 342.5 billion cubic feet, which is accounted for as follows: There was a previous estimate of Dr. Katz of

Argument by Mr. Chambers.

345.5 billion cubic feet as at January 1st, 1945 and then there was an adjustment, loss, due to change of G.O.P. area from 23 to 20 billion cubic feet due to uncertainty of time for which G.O.P. plant will operate, a deduction of 3 billion cubic feet and on the basis of Dr. Katz recommendation, the figure is 342.5 billion cubic feet as at January 1st, 1945.

According to Mr. Stevens-Guille's exhibit 47, upon which Dr. Katz predicates his recommendation, the total residue gas available to market, stored and conserved as of January 1st, 1944, was 406.6 billion cubic feet, as follows:

Madison		
Crude wells	122.7	
Royalite Gas cap	206.1	328.8
G.O.P.		
Crude wells	9.4	
Gas cap	18.3	27.7
B.A.		
Crude wells	27.	
Gas cap	23.1	50.1
		406.6 billion cu. ft.
Less: Loss on processing stored gas	6.8	
not recovered due to economics of gathering, etc.	38.5	45.3
		361.3 " " "

MR. STEER: Is that letter in as an exhibit?

MR. CHAMBERS: I do not think it is.

MR. STEER: I never saw it.

MR. HARVIE: I got a copy.

MR. FENERTY: We did not get one.

MR. CHAMBERS: I have not got a copy here.

MR. STEVENS-GUILLLE: I can provide one.

THE CHAIRMAN: Do you want to adjourn, Mr. Chambers?

MR. CHAMBERS: Thank you.

(At this stage the Hearing was adjourned until 2 P.M.

.....

P.M. SESSION

MR. CHAMBERS: Mr. Chairman, just before we rose at lunch time, I had referred to a letter from Mr. Bailey of the Conservation Board to, the one I have before me is to The Royalite Oil Company Limited. I was under the impression it had been circulated to all parties interested in the reserves.

THE CHAIRMAN: You mean a letter from Dr. Katz.

MR. CHAMBERS: No, a letter not from Dr. Katz. It apparently was following a discussion with Dr. Katz. Now just so that everybody will be appraised of it, I would like to read it into the record. I thought probably Mr. Bailey would be here this afternoon to let us know how far it had circulated.

THE CHAIRMAN: I do not think I have ever seen that one.

MR. HARVIE: I may be able to add a little light on the matter. When Dr. Katz left one of the last things he said he would leave was a summary of that with the Board and some time later, on the phone, Mr. Bailey advised us that it was going out in letter form. The letter I got a copy of was addressed to me.

MR. CHAMBERS: The letter is headed The Natural Gas

Utilities Board and it is dated New Telephone Building, Calgary, Alberta, February 26th, 1946, addressed to The Royalite Oil Company, Limited, 606 2nd Street West, Calgary, Alberta. Attention Mr. Stevens-Guille, re reserve estimates.

"Dear Sirs:-

On February 21st a meeting was held at the offices of the Conservation Board to discuss the matter of the setting of Gas Reserve Estimates to serve as a basis in the computation of sharing position under the Natural Gas Utilities Board regulations.

At that time it was agreed that the writer would circularize all parties concerned setting the gas reserve figures for each area in the Turner Valley field, and asking for your concurrence in writing in accepting these figures to be used in the calculation of sharing position.

The following is a list showing the gas reserve figures for each of the three areas in Turner Valley -

British American Oil Company, Limited

Gas Cap 22.5 MMMcf taken to 100# abandonment pressure.

Crude Oil Area 23.0 MMMcf taken to abandonment at 10 barrels per day, or 75# tubing (whichever may be the lesser).

Gas & Oil Refineries, Limited

Gas cap 14.4 MMMcf taken to 215# abandonment pressure.

Crude Oil Area 8.6 MMMcf taken to 10 barrels per day or 75# tubing pressure (whichever may be the lesser.)

In the case of the Gas & Oil Refineries, Limited

" area, it was mutually agreed that instead of taking the combined gas cap and crude oil areas as 23.0 MMMcf a figure of 20.0 MMMcf should be taken in view of the uncertainty as to the length of time for which this plant might operate. We would, therefore, ask your concurrence in using the 20.0 MMMcf reserve figure for this area.

Royalite Area.

Gas cap 170 MMMcf to 195# abandonment pressure.

Crude Oil Area 107 MMMcf to 10 pounds per day or 75# tubing pressure.

A grand total of the above reserves amounts to 342.5 MMMcf for the entire Turner Valley field.

The Board would appreciate hearing from you in this regard at your earliest convenience.

Yours very truly,

"A.G.Bailey"

A. G. Bailey.

AGB/TLC. "

THE CHAIRMAN: Oh yes, I know that letter. I thought you said a letter from Mr. Davis.

MR. CHAMBERS: No, Mr. Bailey.

THE CHAIRMAN: Oh no, I know about that.

MR. CHAMBERS: Obviously the letter refers to the Royalite Area and Mr. Stevens-Guille points out what he intends to say is the Madison Area. The only change in that is there is 3 billion cut off the Gas & Oil Refinery area.

Dr. Katz' original estimate following the hearing of the evidence of the various parties who gave

estimates, of 361.3 billion cubic feet which he estimated would go to the dry gas market was to be dealt with or handled as follows: There was sold for storage in Bow Island 4.1 billion cubic feet and stored and/or conserved in Turner Valley, 60.1 less loss on reprocessing stored gas, which would be 53.3 billion cubic feet. And then there would be marketed direct as produced 303.9 billion cubic feet, which made a total of 361.3.

Exhibit 158 which was prepared and filed by Madison shows that during the year 1945 there were actually marketed 16,555,414 m.c.f. of residue gas which would leave available marketable reserves as at January 1st, 1946, on that computation, 326 billion cubic feet. That is made up as follows:

	Jan. 1/45	1945	Jan. 1/46
Madison Area	277.0	12.5	264.5
B. A. Area	45.5	3.1	42.4
G.O.P. Area	20.0	.9	19.1
	342.5	16.5	326.0 billion cu. ft.

Of course this letter I have just read takes 3 billion more off.

Just as a matter of interest I point out that the 16.5 billion cubic feet actually marketed in 1945 compares with 18.1 billion cubic feet estimated in Exhibit 55 - Table 1. It just shows almost 2 billion less.

Now I am just going to deal briefly with the stored and conserved gas.

Exhibit 47, which was prepared and

filed by Mr. Stevens-Guille and on which Dr. Katz' estimate was based, shows that crude oil well gas produced from wells directly connected to the Madison and G.O.R. systems (in excess of the current market requirements from time to time) would be as follows: First of all, gas stored in Royalite's Gas Cap from 1945 to 1948 of scrubbed gas, stored in Bow Island, 4.1 billion cubic feet and 1945 to 1955 stored in Royalite Gas Cap, 21.9 billion cubic feet, or 26 billion cubic feet in the two places. That would be taken from the Madison system 22.2 billion cubic feet and from the G.O.R. 3.8 billion cubic feet. That Exhibit also shows that there would be marketed in excess of the current share of the market of such crude wells by the same being currently sold to Royalite (at a discounted price) and directly marketed by Royalite on account of its gas cap's share of the market - thereby avoiding the cost of storing such excess crude well gas and the extra installation, the equivalent amount of Royalite gas cap gas not produced being regarded, and referred to, as conserved gas. That Exhibit 47 indicates this, that from 1945 to 1957 from the Madison crude wells there would be 19.7 billion cubic feet and from 1945 to 1957 from the G.O.R. crude wells there would be 3.3 or a total of 23 billion cubic feet of what we call Conserved Gas.

Exhibit 47 (Table 8) also shows that crude oil well gas produced from wells connected to the B.A. system (in excess of the current market requirements) will be stored in the south end as follows:

From 1945 to 1957 (B.A.) - 15.1 billion cubic feet.

In other words, during the period 1945

to 1957 crude well gas will be produced in excess of the current market requirements to the extent of 64.1 billion cubic feet and would be handled as I have outlined:

Stored in Bow Island	4.1	billion cubic feet
Stored in Royalite Gas Cap	21.9	" " "
Stored in B.A. Area	15.1	" " "
Conserved in Royalite Gas Cap	23.0	" " "
Or a total of.....	64.1	

Now Royalite, in its Exhibit 97, states that it is prepared to purchase from Madison excess crude well gas for storage in Royalite's gas cap and also gas to take the place of its conserved gas in the market at the current well-head price discounted at a fair rate of interest on the basis of a 15 year period and that when such gas is marketed in the future it would be re-sold by Royalite at neither more nor less than the price which has been so discounted. Now what I have said there is what was in the Exhibit, but I will before I finish my argument, modify that basis of computation.

Stevens-Guille pointed out that it would be between 10 and 13 years before Royalite's stored and conserved gas would be marketed. See Exhibits 47 and 50, Volume 29, pages 2260 to 2261 and Volume 31, pages 2395-2396.

Royalite submits that 8% is a fair interest discount rate for stored and conserved gas to be purchased by it.

Exhibit 99,

Exhibit 110 (Baker).

That is all at the moment I say about

conserved gas or stored gas. I will deal with prices later on. Then just briefly the market demand for Turner Valley Reserves. We are all interested in that and the Board is because it must predicate its prices upon how much gas is to be sold or the estimate of how much is to be sold.

MARKET DEMAND FOR TURNER VALLEY RESERVES.

Exhibit 55 prepared and filed by Stevens-Guille (based on estimates obtained from the Gas Company and other interested parties) - the other interested parties being the Refinery at that time and the Nitrogen Plant- assumes that the Alberta Nitrogen Plant will operate only to the end of 1946 and (based on that assumption) Mr. Stevens-Guille in that Exhibit 55 estimated the total market requirements as follows:

	Billion cubic feet	
	Total	Yearly Average
1945 to 1970	303.5	11.6
1945 to 1974	353.0	11.7
1947 to 1970	270.4	11.2

I am giving the different computations because it may be the Board wants to take a different period.

1947 to 1974	320.0	11.4

Now these figures include the estimated requirements of the Imperial Refinery but they do not include the Nitrogen Plant, but that Exhibit included the Nitrogen Plant for 1945 - 3.5 billion cubic feet and the Nitrogen Plant 1946 as shown in Exhibit 176, which was a later one filed, estimated by the Nitrogen Plant that they would require 3.18 billion for 1946. The Imperial Refinery which was included in the first figure is 1.8 billion cubic feet.

Now there is in Exhibit 54, and that was prepared and filed by Mr. Brownie of the Canadian Western Company, statements which show among other things that the Company's peak daily loads are estimated to be, exclusive of the Nitrogen Plant, after 1946, 95.5 million cubic feet, and ranging up to 1970, 97.6 million cubic feet, and I am not going to read all the figures but the reporter can put them in, as I say the figure for 1970 would be 97.6.

(The statement was as follows:-

1946	95.5 million cu. ft.
1945	85.7 "
1947	80.8 "
1951	82.4 "
1956	86.4 "
1962	90.4 "
1967	94.9 "
1970	97.6 "

And now I have before me a letter giving a revised estimate of the market requirements for the years 1946, to 1948 inclusive, and I have had copies of it made and I would like to distribute them now. It is a letter from Mr. Brownie addressed to Mr.Stevens-Guille, and I would just like, as I say, to distribute copies of that letter now.

(Copies of document here distributed by Mr. Chambers).

In other words, this is the most up-to-date forecast which I have been able to obtain with respect to the three-year period,1946, 1947 and 1948, and that letter reads as follows:-

Argument by Mr.Chambers.

"

THE CANADIAN WESTERN NATURAL GAS
LIGHT, HEAT AND POWER COMPANY LIMITED

215 Sixth Avenue West,
Calgary, Alberta.
May 10th, 1946.

Madison Natural Gas Company Limited,
604-6 Second Street West,
Calgary, Alta.

Attention Mr. H. L. Stevens Guille.

Dear Mr. Stevens Guille:

We have been requested to review the figures which we have submitted for the Natural Gas Utilities Board as to future gas requirements in the light of experience since these figures were prepared some two years ago. We have done so, and have revised upwards our estimates of gas requirements for the years 1946, 1947 and 1948 in accordance with the attached statement. We are sending you this copy for your information.

Yours very truly,

"F. A. Brownie"

Executive Assistant to the
President.

FAB:JDW.

"

And then on the next page is shown the estimates that Mr. Brownie has given, and he breaks them down into the Canadian Western system proper, that is the various customers that are connected to it and he shows separately, in addition to the Imperial Refinery, which is estimated at 1,800,000, and the Nitrogen Plant 3,180,000 for 1946, 3,000,000 for 1947 and 3,000,000 for 1948, those are all M.C.F., and the totals are given.

Argument by Mr.Chambers.

THE CANADIAN WESTERN NATURAL GAS, LIGHT, HEAT AND POWER COMPANY LIMITED

ESTIMATED GAS REQUIREMENTS FROM TURNER VALLEY

M.C.F.

Year	Canadian Western	Imperial Oil Ref.	Alberta Nitrogen	Total
1946	10,770,000	1,800,000	3,180,000	15,750,000
1947	9,548,000	1,800,000	3,000,000	14,348,000
1948	8,328,000	1,800,000	3,000,000	13,128,000

The Canadian Western Company does not put forward the figures above under " Imperial Oil Refinery" and "Alberta Nitrogen" as its estimate, since these are the subject of evidence before the Natural Gas Utilities Board.

These figures are included here because they are being used as a working basis for computation by some of the parties to the Enquiry.

FAB:JDW .

May 9, 1946. "

MR.HARVIE: I wonder if I might ask Mr. Brownie, did you use the same figures as you used formerly?

MR.BROWNIE: Yes.

MR. CHAMBERS: Now then, the next statement which is attached is one which I compiled or had compiled, because we have been trying to give some estimates to the Board of what other markets there are, so the next sheet is really just a compilation which I have had made.

The first three lines are based on what Mr. Brownie has shown in his letter, except in 1944 and 1945 where we used the actual. Then we deal with the Valley Gas Company and based on Exhibit 55 we show the actual for 1944 for the Valley Gas Company and the actual for 1945, and then for 1946

the estimates are 235,000 for each of the years 1946 to 1948, and then Royalite-Domestic, and that is in Turner Valley, taken from Exhibit 55, except the actuals were given for 1944 and 1945, and they ran to 44,281.

Then the Valley Pipe Line Company, Exhibit 55, shows the actual for 1944 and 1945, and an estimate of 33,000 for 1946, 20,700 for 1947, and 12,900 for 1948.

And then there is the Bow Island Storage. There was no storage, of course, in 1944. 1945, the actual figure is given, and 1946, 1947 and 1948 is given at 856,000. That, in my recollection, is somewhat smaller than the figures which were talked about earlier in the hearing, and it is to be observed that the Imperial Refinery in the actual for 1945 was only one month, that is the month of January because the other months were shown in the Gas Company's books.

(Go to Page 6585)

Argument by Mr.Chambers. - 6585 -

(Statement referred to by Mr. Chambers.)

	1944 (Actual)	1945 (Actual)	1946	1947	1948
Canadian Western	10,000,595	12,818.669	10,770,000	9,548,000	8,328,000
Imperial Refinery (Ex.55)	1,820,381	174,285 (1)	1,800,000	1,800,000	1,800,000
Nitrogen Plant	3,202,355	3,155,281	3,180,000	3,000,000	3,000,000
	15,023,331	16,148,235	15,750,000	14,348,000	13,128,000
Valley Gas Co.(Ex.55)	357,309	28,801	235,000	235,000	235,000
Royalite-Domestic (Ex.55)	36,901	44,281	44,100	44,100	44,100
Valley Pipe Line Co. (Ex.55)	40,696	35,154	33,000	20,700	12,900
	15,458,237	16,509,471	16,062,100	14,647,800	13,420,000
Bow Island Storage		744,628	856,000	856,000	856,000
	15,458,237	17,254,099	16,918,100	15,503,800	14,276,000

(1) one month only.

(2) above figures on basis 14.4 lbs. pressure - 60° F.

Now the next page is part of my argument and which I thought might be of some convenience to have in the form of a statement.

Now, based on the foregoing estimate of Canadian Western, dated May 10th, 1946, the total scrubbed gas sales, exclusive of Bow Island storage, for the period 1944 to 1946 may be computed at a total of 76,097,608 M.C.F., as shown on the accompanying statement, as follows;- and I show how we have extended those figures:

1944	15,458,237	15,458,237
1945	16,509,471	
1946	16,062,100	
1947	14,647,800	
1948	13,420,000	60,639,371
	76,097,608	

I

And then the Bow Island Storage is shown, a total of 3,312,628:

Bow Island storage			
	1945	744,628	
	1946	856,000	
	1947	856,000	
	1948	856,000	3,312,628
			79,410,228

And then the balance of this statement is made up merely of dates which we have selected from the exhibits. They may or may not be of interest.

The following appear from Exhibit 47, upon which Katz' recommendation is based:

Event	Ex.47 Date	Page or Ex. 47 Table
Storage in Bow Island ceases	1948	page 5 Table 2A
Storage in Royalite Gas Cap ceases	1955	page 4
G.O.P. Crude gas gathering ceases	1957	page 5
Brown allowables no longer sufficient	1958	Page 7 Table 3
Sterling Pacific Gas Cap ceases to meet itsproportion of market and assumed to be depleted	1959	page 7
B.A. Crude/gas gathering ceases	1959	Table 6
G.O.P. Gas Cap ceases to meet its requirements	1961	Table 7
Madison crude gas gathering ceases	1964	Table 1

MR.HARVIE: I think in the third line, that should be "1948", should it not, instead of "1946"?

MR. CHAMBERS: Oh yes, in the third line,"the period 1944 to 1948".

	Ex. 47 Date	Ex.47 Page or Table
G.O.P. gas cap assumed depleted	1966	pages 6 & 11
Peak market demands cannot be met	1968	page 2
Operations in Turner Valley cease	1974	page 6

Then the next phase in connection with this particular matter is the question of "Market Sharing".

MR.HARVIE: May I make a suggestion, Mr. Chairman. I imagine through all our arguments there will be statements like these which will be referred to and it might be a convenience if we could have them marked for identification.

THE CHAIRMAN: I think we might as well make them exhibits and we will know where they are.

MR. CHAMBERS: You might call them"Argument exhibits".

THE CHAIRMAN: We can call them straight "Exhibits". The first one you filed will be Exhibit 178.

DOCUMENT FILED BY MR. CHAMBERS PRODUCED AND MARKED EXHIBIT 178.

MR.HARVIE: The Board's Order which was spoken of this morning, if it is allowed in, allowed to be filed, would be Exhibit 178.

THE CHAIRMAN: We will mark it if it comes in, after we have heard the other gentlemen concerning it. It does not matter very much as to its number.

MR.HARVIE: No, except I thought when it was mentioned, and I imagine in the,transcript now a reference is made to Exhibit 178.

THE CHAIRMAN: I do not think so.

MR.CHAMBERS: No, I do not think so either.

Now this matter of the "Market

Sharing" position.

Madison and Royalite both submit, Sir, that:

(1) The market to be shared shall consist of all scrubbed gas currently sold to:

(i) Canadian Western - including gas purchased by it for storage in Bow Island,

(ii) Valley Gas Company,

(iii) Valley Pipe Line Company, for engine fuel,

(iv) Royalite for domestic fuel, and

(v) Any other parties for current consumption, that they might want.

(2) That all gas flared whether on the leases or at the plants, or otherwise, be regarded as not available for the market.

(3) That only gas actually available for the market, after proportionate deductions of flares, plant fuels, etc., be regarded as available for the market.

(4) That the market requirements be proportionately and rateably supplied by and from the gas so available for the market.

Exhibits 86, 87 and 91.

Now, Dr. Katz recommended that:

(1) All gas leaving Turner Valley should be regarded as part of gas marketed for the purpose of sharing the market.

He also recommended

(2) Any gas flared should not be considered as gas available for market.

(3) That the Royalite and B.A. gas caps should share the market on the basis of their allowables;

(4) That the G.O. R. system should share the market on the basis of the metered residue gas from the G.O.R. plant to the Madison system;

that is my appreciation, Sir, of what Dr. Katz recommended when he was last here, and in that regard I refer to Volume 69, pages 5706 to 5717.

Now I have also had prepared, and I will distribute a schedule which specifically and in detail sets forth the principles and mechanics of sharing the market favoured by Royalite and Madison and it is really a revision, in minor respects, of Exhibit 91, which has a Schedule "A", and which has already been filed.

DOCUMENT PRODUCED BY MR.CHAMBERS HERE MARKED AS EXHIBIT 179.

MR. CHAMBERS: Now, I do not propose to take the time to go through it, I do not think any purpose would be served at the moment if I did so, but it is put forth as a suggestion for consideration. I am not saying it is the final point. It may be that with the actual operation there may be something that we have mitted or that would be considered unfair. As I say we put it forward as a concrete suggestion. It has been compiled to give effect to Dr. Katz' recommendation. The only change in this document which I have now filed, and the old Exhibit 91 is that so far as G.O.R. is concerned, they start at the meter where the G.O.R. plant comes into the Madison system.

EXHIBIT 179

FORMULA FOR MARKET SHARING

(EXHIBIT 91 - REVISED JUNE 7th, 1946)

1. In this Schedule, unless the context otherwise required:-

(a) "Allowable" means the amount of natural gas which a well is permitted to produce in a calendar month in accordance with orders or regulations of the Conservation Board for the time being in effect, provided that where the aggregate allowable for any well or group of wells is fixed by the Conservation Board for or on the basis of a period of more than one month the monthly allowable with respect to such well or group of wells shall be deemed to be an amount equal to the allowable for such period of more than one month, divided by the number of days in the period, and multiplied by the number of days in the particular month.

(b) "Board" means the Board constituted under The Natural Gas Utilities Act, chapter 4 of the Statutes of Alberta 1944 and amendments thereto or substitutions therefor.

(c) "British American" means The British American Oil Company Limited.

(d) "B.A.Utilities" means British American Gas Utilities Limited.

(e) "British American Plant" means British American Gasoline Absorption Plant in Legal Subdivisions 5 and 6 of section 22-18-2-W.5. in Turner Valley.

(f) "B.A. Gas Cap Wells" means those gas cap wells listed in

Conservation Board Order No. dated the day of 1946.

(g) "B.A.Utilities' System" means B.A. Utilities' gas gathering lines and compressor stations, in the Turner Valley area, and such auxiliary plants used in connection therewith as are under the control of the Board and included in B.A. Utilities' rate base or such portion or portions thereof as the context may require.

(h) "B.A. Transmission Line" means B.A. Utilities' gas transmission line connecting the British American Plant with the scrubbing plant.

(i) "Conservation Board" means the Petroleum and Natural Gas Conservation Board constituted pursuant to The Oil and Gas Resources Conservation Act, chapter 68 of the Revised Statutes of Alberta 1942 and amendments thereto or substitutions therefor.

(j) "Conserved Gas " means that portion of residue gas delivered to Madison's System in any month (by crude oil well producers directly connected to the said system in excess of the said producers' proportionate share of the market for such month) which is delivered to the market for that month in lieu, and as part, of Royalite's Gas Cap Wells' proportionate share of the market for that month.

(k) "G.O.R." means Gas and Oil Refineries Limited,

(l) "G.O.R. Plant" means G.O.R.'s gasoline absorption plant in section 4-19-2 W.5th, near Hartell, in Turner Valley aforesaid.

(m) "G.O.R. System" means G.O.R.'s gas gathering lines in the Turner Valley area and such auxiliary plants used in connection therewith.

(n) "Mcf." means thousand cubic feet.

(o) "Madison" means Madison Natural Gas Company Limited.

(p) "Madison's System" means Madison's gas gathering lines, gas input lines, compressor stations and scrubbing plant in the Turner Valley area, and such auxiliary plants used in connection therewith as are under the control of the Board and included in Madison's rate base or such portion portions thereof as the context may require.

(q) "Madison's No. 1 Compressor Station" means Madison's gas compressor station located in Legal Subdivision 14 of Section 6-20-2 W. 5th.

(r) "Madison's No. 3 Compressor Station" means Madison's gas compressor station located in the northeast quarter of section 7-19-2 W. 5th.

(s) Madison's South Residue Lines" means Madison's gas pipe lines from the G.O.R. Plant to Madison's No. 3 Compressor Station and from the said compressor station to the junction with the B.A. transmission line at or near Hartell.

(t) "Natural Gas" means natural gas as defined by the Natural Gas Utilities Act, chapter 4 of the Statutes of Alberta 1944.

(u) "Producer" means every person, firm or corporation and their lessees, trustees, liquidators or receivers by any court or otherwise lawfully appointed, which owns, operates,

manages or controls any petroleum or natural gas well from time to time connected with, and delivering gas to the Plants or Systems of British American, B.A. Utilities, Madison and/or G.O.R.

(v) "Residue Gas" means gas remaining after the processing of natural gas by any of the British American Plant, the G.O.R. Plant and the Royalite Plant.

(w) "Royalite" means Royalite Oil Company, Limited.

(x) "Royalite Plant" means Royalite's gasoline absorption plant in Legal Subdivision 14 of Section 6-20-2 W.5th, in Turner Valley aforesaid.

(y) "Royalite's Gas Cap Wells" means those wells listed in Conservation Board Order No. 567 dated the 14th day of November, 1944.

(z) "Scrubbing Plant" means Madison's Gas Scrubbing Plant in Legal Subdivision 14 of Section 6-20-2 W.5th in Turner Valley aforesaid.

(zz) "Total Market Requirements" means all scrubbed natural gas (after being purified or scrubbed in the Scrubbing Plant) sold and delivered in any month by Madison to Canadian Western Natural Gas, Light, Heat and Power Company Limited, to Valley Gas Company Limited, to Royalite Oil Company Limited, to Valley Pipe Line Company Limited and to any other party or parties.

2. The share of the market for each month shall be computed in accordance with, and on the basis of, the rules, principles or factors set forth and contained in clauses (3) to (11)

hereof, both inclusive.

3. The volume of the Conservation Board's Allowable of Royalite's Gas Cap Wells for the month, less the volume blown to the air in well operation, shall be added to the volume of natural gas delivered from crude wells direct to Madison's System during the month.

4. The total volume of the Allowables thus obtained (being the total of the volumes referred to in (3)) shall, at the end of the month, be converted to residue gas equivalent by deducting therefrom:

(i) the rateable portion thereof used by the Madison system during the month, for heater fuel and compressor engine fuel,

(ii) shrinkage in the volume occasioned by the extraction therefrom of natural gasoline or other hydrocarbons in the Royalite Plant.

(iii) the rateable portion thereof used during the month in operation of the Scrubbing Plant and auxiliary plants and of Royalite's Plant,

(iv) any residue gas re-delivered therefrom to the producer during the month, for lease or drilling fuel,

(v) the rateable portion of any residue gas flared or popped to the air from Madison's No. 1 Compressor Station

(vi) The rateable portion of any natural gas flared or popped to the air from Madison's No. 3 Compressor Station.

which net volume so ascertained and computed is hereinafter referred to as, and included in the expression, "Madison's

Marketable Gas."

5. The volume of the Conservation Board's Allowable of B.A. Gas Cap Wells for the month, less the volume blown to the air in well operation, shall be added to the volume of natural gas delivered from crude wells direct to the B.A. Utilities System during the month.

6. The total volume of the Allowables thus obtained, (being the total of the volumes referred to in (5)) shall, at the end of the month, be converted to residue gas equivalent by deducting therefrom:

(i) the rateable portion thereof used by B.A.Utilities System during the month, for heater fuel and compressor engine fuel,

(ii) shrinkage in the volume occasioned by the extraction therefrom of natural gasoline or other hydrocarbons in the British American Plant,

(iii) the rateable portion thereof used, during the month in the operation of the British American Plant and auxiliary plants,

(iv) the rateable portion thereof used during the month in the operation of the scrubbing plant and auxiliary plants thereto,

(v) any residue gas re-delivered from the British American Plant to the producer, during the month, for lease or drilling fuel,

(vi) any residue gas flared or popped to the air from the B.A.Utilities' System and from the British American

Plant,

which net volume so ascertained and computed is hereinafter referred to as and included in the expression, " B.A.Utilities' Marketable Gas."

7. The volume of residue gas delivered by G.O.R. during the month, through Madison's meter at the G. O.R. Plant less the following deductions therefrom;

(i) the portion thereof used, during the month, for heater fuel in the operation of Madison's South Residue lines,

(ii) the rateable portion of fuel used in the operation of Madison's No. 3 Compressor Station,

(iii) the portion thereof flared or popped to the air at Madison's No. 3 Compressor Station,

(iv) the rateable portion thereof used, during the month, in the operation of the scrubbing plant and auxiliary plants thereto,

(v) the rateable portion of any residue gas flared or popped to the air from the Madison system,

is hereinafter referred to as, and included in the expression, "G.O.R.'s Marketable Gas."

8. "The Total Marketable Gas" during any month, shall be the total aggregate of Madison's Marketable Gas, plus B.A. Utilities' Marketable Gas plus G.O.R.'s Marketable Gas.

9. Madison's Share of the Market, for any month, shall be that proportion of the Total Market Requirements, for such

month, which Madison's Marketable Gas for that month bears to the Total Marketable Gas for such Month.

10. "B.A.Utilities'" Share of the Market for any month, shall be that proportion of the Total Marketable Requirements, for such month, which B.A.Utilities' Marketable Gas, for that month, bears to the Total Marketable Gas for such month.

11. "G.O.R.'s" Share of the Market, for any month, shall be that proportion of the Total Market Requirements, for such month, which G.O.R.'s Marketable Gas, for that month, bears to the Total Marketable Gas for such month.

(Go to Page 6598.).

And also take in the Bow Island, that is on the terms that it will be bought by the Gas Company.

Now just briefly in order to complete the record in this regard I wish to refer to this matter of other Alberta gas reserves.

Mr. Slipper, called by the Gas Company, in Exhibit 56 stated that, in his view, the Turner Valley reserves might supply Calgary for 20 years and that, as the Turner Valley supply should become inadequate, additional supplies might be obtained by several ways:-

(i) projecting the Foremost terminus of the gas line to known boundary gas fields,

(ii) extending the gas line from Burdett to known supplies at Steveville, 56 miles north (pages 8 and 9),

(iii) the adding of supplies from areas immediately west of Calgary such as Jumping Pound and Moose Mountain (page 9),

(iv) large potential supplies from Central Alberta (Kinsella-Viking) through a pipe line connecting Calgary and Edmonton (page 9).

It is my understanding of the evidence that he did not give specific estimates of reserves that would be made available by (i), (ii) and (iii) but as regards the Kinsella Viking field he estimated a reserve of 600 billion cubic feet which could be materially added to by further development.

vol. 17 pages 1391-1392.

THE CHAIRMAN: At an abandoned pressure of some figure, some one hundred pounds. 500,000 and some pressure.

MR. CHAMBERS: I have not got that sir. I have just here referred to, and the Reporter will have the volume and pages.

THE CHAIRMAN: But no matter which one it was subject to the field not having been developed up to the present time.

MR. CHAMBERS: That is right.

Mr. Webb, who was called by Royalite and Madison, gave the following estimates in his report Exhibit 57:

Viking Field (175 miles n.e. of Calgary)	75.16	billion cu.ft.
Kinsella	130.00	"
Kinsella-Viking (possible extension)	100.00	"
	305.16	"
Foremost (160 miles s.e. of Calgary)	17.60	"
Princess-Steveville - 5400 acres (125 miles S.E. of Calgary)	80.00	"
Bow Island	13.00	"
	415.76	"

See his evidence:

As to Viking and Kinsella Fields:

Exhibit 57,

Vol. 18 pages 1405-1406,
1426-1428,
1397-1399,

As to Princess Field:

Vol. 19 pages 1469 to 1472.

Mr. Galloway, on behalf of California Standard, dealt with the Princess Field and gave as his estimates for that field:

On a conservative basis he said	72	billion cu. ft.
On an optimistic basis, he said	138	"
	210	"
Reasonable	100	"

THE CHAIRMAN: The only conclusion you can come to from Mr. Slipper is that if Turner Valley should become exhausted that there is lots of gas in other parts of the province and that is all he can say.

MR. CHAMBERS: Now in the next phase of my argument I propose to deal with the valuation of the Madison Company's property rate base so called.

PART (111) 1. Necessity for Valuation.

The just and reasonable prices or rates to be fixed and determined by the Board with respect to the services rendered by Madison should at least, I suggest, be such as will enable Madison to receive each year gross revenues therefrom as will cover or equal:

(a) its operating expenses, and under capital charges I have in mind:-

(b) its capital charges, consisting of:

(i) annual depreciation,

(ii) a fair net return,

(iii) income taxes.

In order to ascertain, and provide for such capital charges, it is at once apparent of course that the fair value of Madison's property (plant, equipment and working capital) which is used and useful in the performance of those services to be charged for must be ascertained in order to arrive at:

(a) the amount which is to be amortized through the rates,

(b) the amount on which a fair net rate of return is to be provided for in the rates.

2. HOUSE OF LORDS AND PRIVY COUNCIL DECISIONS AS TO BASIS OF VALUATION.

Now in approaching the matter of valuation or arriving at a rate base I do suggest it will be worth while to examine how the matter of valuation has been dealt with by some of the authorities in this country and in England and in the United States, and I would like to lay before you and for

the benefit of others that are interested certain decisions that I conceive to have some bearing on the matter and, firstly, I am going to deal with some decisions of the higher Courts in England and then I will deal with those in this country. Under the heading of the English decisions I would refer first to the

Edinburgh St. Tramways Co. v. City of Edinburgh.
(1894) 63 L.J.Q.B. 769 (H. of L.)
(1894) A.C. 456.

The statute incorporating the company and giving it the right to construct tracks and operate its street railway system (the statute contained this provision) provided that the city, within 6 months after the expiration of 21 years, might require the company to sell its undertaking, and these are the words of the statute,

> "Upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway and all lands, buildings, works, materials and plant of the promoters suitable to and used by them for the purposes of their undertaking."

Now Lord Chancellor Herschell, in reviewing the decision of the arbitrator had the original duty of arriving at this figure and at page 771 says that the arbitrator had stated that

> "in his opinion, after careful consideration of section 43 of the Tramways Act (quoted above) in valuing the tramways he was not entitled to take into account profits or rental value of the undertaking, but that the proper value of the tramways to be determined by him according to his construction of the statute, was such sum as it

would cost to construct and establish the same under deduction of a proper sum in respect of depreciation for their present condition, and that in estimating such cost he was entitled to take into account the fact that the tramways were then successfully constructed and in complete working condition."

The House of Lords affirmed the Arbitrator's basis of valuation.

At much the same time another decision was up for consideration under a similar statute, that is,

The London County Council v. London Street Tramways Co. (1894) 2 Q.B. 189 (C.A.)

affirmed (1894) A.C. 489 (H. of L.), which was also affirmed by the House of Lords at the same time as it rendered its decision in the Edinburgh case.

The statute under which the tramways system was constructed and operated by the Company provided that the Metropolitan Board of Works might within 6 months after the expiration of 21 years from the passing of the Act require the Company to sell (and I am quoting from the statute)

"their undertaking, upon terms of paying the then value .....of the tramway.....and plant of the company suitable to and used by them for the purposes of their undertaking"

exclusive of any allowance for past or future profits or any compensation for compulsory taking, such value to be determined by arbitration.

Now Lindley L. J. at page 206 says this:-

"What is the value of the tramway to a purchaser who is entitled to use it, but who is not to be charged anything in the shape of an allowance of past or future profit of the undertaking ? The arbitrator has answered this

question by saying that the value is what it would cost the purchaser to lay down the tramway. After much consideration I have come to the conclusion that he is right."

Then Lord Lindley goes on to say at the same page, that excluding the value of old iron (i.e. scrap value) on the one hand and an allowance in respect of past or future profit of the undertaking on the other, and I quote from his judgment:-

"There appears to me nothing left except to say that the present value is either what the tramway cost to make, less some deduction for depreciation from wear and tear, or what it would cost the purchasers to make if they had to make it themselves. Cost price is well known to be no real criterion of the value of an outlay on land. What the result of the outlay will fetch if sold is often much more and often much less than the outlay which has produced it, and the arbitrator was quite justified in not adopting this mode of valuation. There remains only the other which he has adopted.

(Note: the judgment of the House of Lords affirming the foregoing judgment was delivered at the same time as the judgment in the Edinburgh Tramway Case supra).

And as I say the House of Lords affirmed that decision at the same time it rendered this decision in the Edinburgh case.

THE CHAIRMAN: Are the principles on which an arbitrator would act under expropriation proceedings or compulsory purchase the same as the principles which would apply to rate making ?

MR. CHAMBERS: I say in the initial instance, yes sir, because it is being taken from unrestricted private ownership and apart from then on a man is not free to do with it as he likes. I am not suggesting that these statutes did exclude any 10% for the compulsory taking.

Melbourne Tramway etc. Co. v. Tramway Board.
(1919) 88 L.J.P.C. 102.

Where a local authority had power, by statute, to acquire the undertaking of a street railway or tramways company upon paying, (these are the words of the Statute). Now that is in essence the only thing that the Statute says,-

"such compensation as is determined by arbitration"

the Judicial Committee held that the arbitrator (a Supreme Court Judge) was entitled to estimate such compensation for the plant by calculating the cost at which that plant could have been supplied at the date of transfer, and then making a deduction for the fact that the plant was not new, but had been used; and that he was justified in disregarding the possibility that the whole system of working the tramways might be changed so as to make the existing plant of less value.

Then I would like to refer briefly to the Toronto Street Railway case.

Toronto v. Toronto Railway.
(1925) 94 L.J.P.C. 25.

In that case the City of Toronto (acting under statutory powers contained in the railway company's Act of incorporation of 1892) took over (as at September 1st, 1921, i.e. the 30 year expiry date fixed in the statute) a street railway system, owned and operated by the Company, at a valuation to be determined by an arbitration board.

Now the statute or rather the statutory agreement provided that the arbitrators were, (and I am quoting from the document itself):-

"to consider only the actual value of the actual and tangible property, plant, equipments and works connected with and necessary to the operation of the railways"

and the statute goes on:-

"in arriving at such value the arbitrators are to consider and award only the value of the said several particulars to the City at the time of the arbitration, having regard to the requirements of a railway of the best kind and system then in operation and applicable to the said City."

(Go to Page 6606)

Now the Judicial Committee of the Privy Council held that, in valuing the rolling stock, buildings and track, the arbitrators were right in valuing the property at what it would cost to reproduce it less depreciation, and in estimating the cost of reproduction on the basis of the prices of labor and materials current at the date of the valuation, and should not have taken into account the prices current during the period which it would have taken the City to construct a railway to be ready for use at the date of the transfer. Now, I imagine that the prices must have gone down.

The City urged that, having regard to the fact that the price was to be the value to the City at the time of the taking, the arbitrators should have first considered whether, having regard to size, suitability, location and other factors, a reasonable person would reproduce these assets as part of a Toronto street railway system in 1921, and if not, to value them on the basis of what they would fetch or if no sale were possible, then on a "scrap basis".

Viscount Cave, the case went to the Privy Council, speaking for the Judicial Committee, rejected this contention and in approving the arbitrators' valuation in this regard, he says at page 32:

> "No doubt they took reproduction cost less depreciation as affording a serviceable guide in valuing the track, rolling stock and buildings; and in this they were fully justified by the authorities cited. Indeed it is difficult to see how such items as fixed plant in situ, car barns, car construction and repair shops, sub-stations and the machinery which they contain, could have been valued except with the assistance of some such principle.

But the arbitrators were careful to make it clear that they had by no means adopted reproduction cost less depreciation as the only and sufficient test of value. In valuing the track and other plant, in situ, they allowed.....not only for wear and tear, but for 'obsolescence' and had regard to good practice in railway administration and to section 4, subsection 4 of the Act (value to the City) and also to comparative utility, and other relevant considerations. So, in valuing rolling stock, they gave due weight to character, obsolescence, and alleged defects and advantages from the operating standpoint; and with regard to buildings, suitability and other matters bearing upon their value were plainly not neglected.....it will appear that they not only proceeded on lines which had been approved by many decisions of the House of Lords and of this Board, but gave due weight to the special provisions of the Act of 1892 and to all the circumstances of the case."

Then there is a more recent case, which I mentioned during the Hearing, the case of International Railway Company v. Niagara Parks Commission,(1937) 2 W.W.R. 641 (P.C.) 1937 3 All. E.R. 181 (P.C.), (1936) O.L.R. 195 (Ont. C.A.)

This case is a bit different than the ones I have just referred to because having regard to the statute it rested with the company whether they turned it over or not.

By an agreement made in 1891 and confirmed by statute the company was given the exclusive right to construct and operate an electric railway for 40 years.

The agreement provided that, on its determination, I am reading from a quotation from the agreement,

"the company shall be duly compensated for their railways, equipment, machinery and other works.....but not in respect of any franchises for holding or operating the same."

the compensation to be fixed by mutual agreement or, in case of difference, by arbitration.

And the statutory agreement also contained this provision that the company's tariff of fares, and I quote:-

"shall be a reasonable one and shall be subject to the approval of the commissioners, provided however that the commissioners shall not have the right to insist upon such a tariff as will prevent the company operating the.....railways at a fair profit, but it shall be their privilege to exact from the company the imposition of reasonable rates only."

Due to the changed conditions caused by the advent and general use of automobiles the railway, which was constructed in the Niagara Peninsula, (at the expiration of the 40 year period) while still operating did not and could not operate at a profit.

The Company claimed that the compensation should be fixed on the basis of reproduction cost new less depreciation whereas the Parks Commission contended that (as the railway was admittedly a losing proposition which could not be made to pay) it should be valued at what could be realized from the disposal of its component parts.

Now it was not disputed that the company operated the railway down to the end of the 40 year period and then handed it over to the Commission as a complete railway

with its appurtenances capable of operating in situ, nor was there any compulsory taking as the company (under the statutory agreement) had the right to require an extension on giving notice. (1936 O.L.R. 204).

During this 40 year period the company paid a dividend in only one year and, during the last 11 years of the 40 year period, its earnings in each year (except one) were short of its operating expenses. For the last 13 years of its operation the annual loss (after allowing for depreciation and paying its bond interest) ranged from $25,000.00 to $112,000.00 per year. The reference to that information is to be found in the reports of the Ontario decision which is 1936, O.L.R. 204, and 1937 2 W.W.R. 649.

The majority of the arbitrators valued the system at $179,104.00 being the amount that could be realized from the disposal of its component parts.

The minority arbitrator claimed the value should be on the basis of reproduction cost new, less depreciation.

Having concluded that the reproduction cost new was not the proper basis the majority arbitrators stated,

> "we think it is a question of law as to whether or not this conclusion is right"

And then they went on in order to prevent unnecessary expense (in the event of their being wrong) they found as a fact that on the basis of reproduction cost new the amount should be $1,414,684.00 undepreciated and $972,592.00 depreciated.

Of course, the Company appealed to the

Ontario Court of Appeal which affirmed the majority arbitrators award of $179,104.00.

On the Company's further appeal to the Privy Council, the Judicial Committee:

(a) reversed the judgment of the Ontario Court below,

(b) held the majority award to be wrong,

(c) fixed the value at $1,057,436.00 by including certain items of reproduction cost which had been disallowed by the arbitrators, in arriving at the nine hundred thousand dollar figure.

Lord Macmillan, speaking for the Judicial Committee, at page 650 (W.W.R.) refers to the fact that the Company had maintained and operated the railway complete with equipment, as it was bound to do, up to the date in question and he states,

"That for which they are to be duly compensated is the same thing as that which they were bound to hand over, namely, their railway with its equipment.....a going concern and not a mere collection of materials."

And then goes on at Page 653:

"Their Lordships are accordingly of opinion that the majority arbitrators have misdirected themselves in law in their interpretation of the terms of transfer and that the judgment of the Court of Appeal in affirming that interpretation is erroneous. The Company have transferred to the Parks Commissioners their railway as a complete entity duly equipped and capable of performing its functions as an operating railway and in that sense capable of earning a profit. That it cannot in fact earn a profit owing to the development of motor transport

is not a relevant consideration in assessing the compensation to be paid for the railway under the terms of transfer."

I now refer, sir, to a few Canadian decisions. Going back to the New Brunswick Public Utilities Act, which I referred to this morning, ch. 127 R.S.N.B. 1927, provided (sec.10) that all charges made by a public utility should be

"reasonable and just"

and it prohibited and declared unlawful

"every unjust or unreasonable charge".

The statute also (by sec. 6) empowered the Board to investigate rates and provided that it might order any rate to be,

"reduced, modified or altered as the justice of the case may require".

(See sections quoted at page 35 of Part (1) of this Argument).

Now in the Moncton Tramway Electric & Gas Co. Ltd.
(1927) 3 D.L.R. 1112 (N.B.C.A.)
53 N.B.R. 469,

Grimmer J. who delivered the judgment of the Court of Appeal, states at page 480:

"It is now definitely settled.....that in ascertaining the value of the service the cost of reproducing the property used in furnishing the service, at present costs of labor and materials less depreciation, and not merely the original cost or value of the property at some other date, must be considered and is the most satisfactory method of proof of such value."

Then I refer again to the Public Utility v. Maritime Electric Company, (1935) 1 D.L.R. 456, (N.B.C.A.) to which I referred this morning, -

Baxter J. (now C. J.) at page 459 refers to the judgment of the Court in the Moncton Tramways Case, and states that that decision,

> "does not say and was not intended to say that rates are to be fixed with reference only to the cost of reproducing the property used in furnishing the service. That is simply one of the elements in ascertaining the value of the service and the court has only said, in effect, that where you have competing appraisals, one based upon present costs of labor and material, less depreciation, and the other upon the original cost or value of the property at some other date, the former is the more satisfactory method of proof of such value."

MR. STEER: Will you give me the name of that case ?

MR. CHAMBERS: P.U. Commissioners, v. Maritime Electric Company, (1935) 1 D.L.R. 456, at page 459, and the Moncton case is found -

MR. STEER: Yes, I have that. Thanks Mr. Chambers.

MR. CHAMBERS: Re Peterborough v. Peterborough Electric Light & Power Company Limited, (1916) 52 O.L.R. 9 (C.A.).

The Court held that the property was to be valued in situ as tangible property immediately available for use and operation as a going concern.

The King v. Spencer.
(1939) Ex. C.R. 340.

His Majesty expropriated Spencer's home property in the City of Vancouver.

Mr. Justice Angers held that the proper manner in which to value the property was to arrive at replacement cost and deduct therefrom the depreciation which the

buildings had suffered since their erection. The result arrived at was considerably in excess of original cost.

I think I would like to advert for a moment to the McGillivray Commission report in its 1939 decision in the Valley Pipe line and at page 8 this is stated:

"The measures of value most commonly used can be divided into two groups:

The first of these groups relates to the value of the property at the time of its construction, including:

1. the original cost of the property,
2. the book cost,
3. the historical cost,
4. the prudent investment cost.
5. the investment cost measured by outstanding securities.

(Go to Page 6614)

The second group of measures of value pertains to the value of the property at the time the valuation is made. This group of measures of value includes:

1. the reproduction cost value,
2. the reproduction cost value less depreciation,
3. the split inventory value,
4. the Taxation value,
5. Market value,
6. Purchase value.

Then the report of the Commission goes on at page 9 and quotes from Wilson, Herring and Eutsler on Public Utility Regulation a statement to the effect that,

"valuation is not a matter of formula or formulae, but a problem involving the exercise of judgment by a body of qualified experts upon the basis of evidence of value submitted to them in proceedings before them."

Then the McGillivray Commission goes on to say, at page 9:

"But assuming that valuation is a matter of judgment it is not to be thought that the judgment may be a whimsical one."

Then I quote again from pages 17 and 18: of the same report, the McGillivray Commission.

"It seems to us that we must first decide as to whether or not a fair present rate can be arrived at in the present circumstances without regard to present value. We have no hesitancy in saying that no matter how reached present value must be ascertained for rate base purposes if a fair present rate

"is the aim of the rate-maker."

.....

"One thing is certain, that if a rate-maker proposes to use present value in arriving at a rate base neither original cost nor original investment will serve his purpose in the absence of evidence of unchanged conditions and of unchanged construction costs."

.....

".....if present value is that which is sought and it appears that original cost and present value are different, then original cost must be discarded on the ground that there can be no reconciliation of irreconcilables."

At pages 18 and 19 the Commission also refers to the fact that the utility is being regulated for the first time is of significance.

And it then, at page 20, concludes:

"We think that the conclusion is inescapable; that at least in the case of common carriers presently brought under the control of a regulatory body a present rate must be rested upon a rate-base which includes the present value of the physical properties."

See also page 106 of the McGillivray Commission Report.

Then I would refer briefly to certain American decisions. The American Authorities go back to the well-known case of:

Smyth v. Ames.
(1898) 169 U.S.466.
42 L.ed 819.

Harlan J. at page 547:

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highwqy under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth."

Then the next decision was the Willcox case, Willcox v. Consolidated Gas Company, 1909, 212 U.S.19, and 55 L.ed. 382. And Peckham J. at page 395 had this to say:

"In order to determine the rate of return upon the reasonable value of the property at the time it is being used for the public it, of course, becomes necessary to ascertain what that value is."

Then he goes on at page 399:

"And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property which legally enters into the consideration of the question of rates has increased in value since it was acquired, the company is entitled to the benefit of such increase."

Then there is the case of Simpson v. Shepherd, 1913, 230 U. S. 352 and 57 L.ed 1511. and Mr. Justice Hughes delivering the judgment says:

"It is clear that in ascertaining the present value we are not limited to the consideration of the amount of the actual investment. If that has been reckless or improvident, losses may be sustained which the community does not underwrite. As the company may not be protected in its actual investment, if the value of the property be plainly less, so the making of a just return for the use of the property involves the recognition of its fair value if it be more than cost. The property is held in private ownership, and it is that property, and not the original cost of it, of which the owner may not be deprived without due process of law."

Now the Court, at least at that time in 1913 found under the requirements of the American Constitution that you had to give them at least that much.

Then there is the Denver v. Denver Union Water Company case, 1918,246 U.S. 178, and 62 L.ed 649, and Mr. Justice Pitney at page 661 said:

"What we have said establishes the propriety of estimating complainant's property on the basis of present market values as to land, and reproduction

"cost, less depreciation as to structures."

Then the Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, 1923, 262 U.S. 276, 67 L.ed 981.

In that case the Company by its engineers gave evidence of reproduction cost new and existing values as of June, 1919 (the date of the hearing). Now the only evidence offered in opposition to values claimed by it was appraisals of its property by the commissions' engineers in 1913, 1914 and 1916, that is three years before.

At page 984 (L.ed) Mr. Justice Reynolds, who delivered the opinion of the Court, said this:

"Obviously, the commission undertook to value the property without according any weight to the greatly enhanced costs of material, labor, supplies, etc. over those prevailing in 1913, 1914, and 1916. As a matter of common knowledge, these increases were large, Competent witnesses estimated them as 45 to 50 per centum."

Then he goes on at page 985:

"It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc. at the time the investigation is made. An honest and intelligent forecast of probable future values, made upon a view of all the relevent circumstances, is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today."

Then West v. Chesapeake & Potomac Telephone Company, 1935, 295 U.S. 662, 79 L.ed. 1641, Mr. Justice Roberts who delivered the judgment of the Court, states at page 672:

"It is true that any just valuation must take into account changes in the level of prices. We have therefore held that where the present value of property devoted to the public service is in excess of original cost, the utility company is not limited to a return on cost. Conversely, if the plant has depreciated in value, the public should not be bound to allow a return measured by investment. Of course the amount of that investment is to be considered along with appraisal of the property as presently existing, in order to arrive at a fair conclusion as to present value, for actual cost, reproduction cost and all other elements affecting value are to be given their proper weight in the final conclusion."

Then in 1940 there is a decision of the Pennsylvania Supreme Court in Solar Electric Company vs. Penn. P.U. Commission, 1940, 31 P.U.R. (N.S.) 275 (Pa. S.C.). Section 311 of the Pennsylvania Utility Law of 1937 provided that:

"the Commission may .....ascertain and fix the fair value.....of the property of any public utility, in so far as the same is material to the exercise of the jurisdiction of the Commission....."

(Also see page 284 of the report).

The Court, in its judgment, states at

page 288 that from 1898 (Smyth v. Ames) to 1938, and obviously that is the Federal Gas case, by the decisions of the U.S. Supreme Courts and of the Pennsylvania Court itself,

> "the cost of reproducing the property has consistently been held to be not only a relevant but also an essential element in the ascertainment of its 'fair value' for rate-making purposes."

It held that as the commission had based its finding as to rates on original cost alone that the appeal should be allowed.

There are two other decisions of the Pennsylvania Supreme Court to the same effect:

Peoples Natural Gas Co. v. Penn. P.U. Comm.
(1944) 51 P.U.R. (N.S.) 129 (Pa. S.C.)

Philadelphia Transportation Co. v. Penn. P.U.Comm.
(1944) 55 P.U.R. (N.S.) 473 (Pa. S.C.)

Then I come to the matter of Original Cost and Value Distinguished and first I would like to refer to Barnes Cases on Public Utility Regulation (1938) at page 433: He says this:

> "The book cost of the property is perhaps the most obvious indication of the amount of property which the company is using in serving the public. The availability of book cost as evidence of the rate base must depend upon the accuracy with which the company's books have been kept. Only where the books have been kept according to a system of accounts prescribed by the commission, and where, in addition, these books have been subject to continuous inspections and audits by the Commission's

"staff, are figures of book cost considered reliable."

Then I come back and I refer you again to London County Council v. London Street Tramway Company, (1894) 2 Q.B. 189 (C.A.) (1894) A.C. 489 (H. of L.)

and Mr. Justice Lindley at page 206 says:-

"Cost price is well known to be no real criterion of the value of an outlay on land."

I also refer in that connection to the McGillivray Report at page 10;

Now then we have the Federal Power Commission v. Hope Natural Gas Company, 1944, 51 P.U.R. (N.S.) 193 (U.S.S.C.)

The Federal Natural Gas Act, 1938, of the United States, which applied to the interstate gas transportation business, contains these sections which I consider are the relevant ones and the ones that should be kept in mind when we are directing ourselves to what the judges said. Section 5 says this: I think I read this this morning.

".....the commission shall determine the just and reasonable rates.....to be thereafter observed and shall fix the same by order. Provided, however, ...the Commission may order a decrease where existing rates.....are not the lowest reasonable rates."

Then section 6:

"The commission may investigate and ascertain the actual legitimate cost of the property of every natural gas company the depreciation

"therein, and, when found necessary for rate-making purposes, other factors which bear on the determination of such cost or depreciation and the fair value of such property."

Now in that case, the Commission fixed the rate base at $33,712,526.00 which, it found, represented the "actual legitimate cost" of the company's property less depletion and depreciation.

See page 196 of the report).

The Court refused to set aside the decision of the Commission.

Douglas J. who delivered the majority opinion of the Court states at page 200:

"....the commission was not bound to the use of any single formula or combination of formulae in determining rates....and when the Commission's order is challenged in the courts, the question is whether that order 'viewed in its entirety' meets the requirements of the Act. Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling."

and at page 201:

"nor is it important to this case to determine the various permissible ways in which any rate base on which the return is computed might be arrived at."

and at page 203:

"Since there are no constitutional requirements more exacting than the standards of the Act, a

"a rate order which conforms to the latter does not run afoul of the former."

In other words, as I understand it, the United States Supreme Court there held that the Act was constitutional and that on the statutory standard of actual legitimate costs and lowest reasonable rates, they could not interfere. There was nothing to interfere with.

THE CHAIRMAN: Before you leave that, Mr. Chambers, let us assume that a plant is being acquired, either by expropriation or compulsory purchase, I think replacement value certainly would be one of the factors you would look at. But supposing that a plant could be replaced or rather supposing a much more efficient plant could be replaced for half of the replacement value, would that be a factor when we come to make a valuation for rate-making purposes?

MR. CHAMBERS: Absolutely yes, I think so.

THE CHAIRMAN: There is a departure from the principle.

(Go to page 6624)

Now there is this question of the substituted plants' theory, but there is no doubt about it, and I am going to come to it later on when we come to deal with depreciation, I say when you are dealing or asking for costs less depreciation, you must deal with it in this sense of obsolescence and that obsolescence is an economic factor.

THE CHAIrman: Then, Mr.Chambers, supposing you have a plant built at a high cost, and the revenues from the plant will not support properly the original costs of the plant, would not the capitalized value of the revenue be another factor to be taken into consideration?

MR. CHAMBERS: Well probably, if you have a plant in place, and it cannot make money, that plant is obsolete, or it has gone down in value. There is no doubt about it, but I say this that when you come to talk about revenue then the question of reasonableness comes in and that is something else.

THE CHAIRMAN: It is very difficult.

MR. CHAMBERS: I admit that it is difficult.

Now as to the question of "Prudent Investment".

The prudent investment theory, as we probably all know, for the purpose of rate regulation, was first enunciated by Mr. Justice Brandeis of the United States Supreme Court, in 1923 in the case of the:

Southwestern Bell Telephone Company v. Public Service of Missouri which I have already quoted.

Now in that case, Mr. Justice Brandeis although he agreed in the result of the decision of his brother judges, he did so on the ground that the order of the state

regulatory commission prevented the company, - and I quote from what he said, at Pages 986 and 987:

> "from earning a fair return on the amount prudently invested by it."

Now I would point this out, Sir, that it is to be observed, in the Southwestern case, the court was dealing with the rate base and rates of a company whose undertaking had been in fact a public utility serving the public from its inception many years before and had been subject to regulation for several years, over a long period of time, and he explained, and I refer to the footnote at page 986, that the term "prudent investment" "is not used in a critical sense".

I would point this out also, and repeat, that in talking about the prudent investment which he there enunciates, Mr. Justice Brandeis said that the term "prudent investment", and again as quoted, "is not used in a critical sense", and then he says this, that in arriving at what he considers or describes as "prudent investment", and I again quote:

> "there should not be excluded from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown."

Now I mention that, particularly, for this reason, Sir, that some witnesses, one of them, Mr. Hamilton, I submit that what he is trying to arrive at in his recommendation is "prudent investment", probably, but I do submit that

in his approach to it he is not approaching it in the sense that Mr. Justice Brandeis sets out. In other words, he takes the position you have to show him that they were prudent , but Mr. Justice Brandeis says, at least, and I say it should be applied in this case, if we are going to use "prudent investment" in that sense, that, "you presume those people were honest until they are shown to be dishonest". "You assume that they did it with the best intentions, and having regard to the best practices at the time."

Now at page 988, in a footnote to the Report. he deals with those different figures, and he distinguishes "prudent investment" from "historical cost", and so on, and it may be of interest if I should read what he says.

He says this:

"Historical cost, that is, the proper cost of the existing plant and business, estimated on the basis of the price levels existing at the respective dates when the plant and the additions were constructed.'

And then he says this is often what is called "prudent investment". Then he goes on to say:

"Historical cost would, under normal conditions, be equal in amount to the original cost, The phrases are sometimes used to denote the same thing. But they are not the same; and they are often ascertained by different processes. Original cost is the amount actually paid to establish the utility. The amount is ascertained, where possible, by inspection of books and vouchers, and by other direct evidence. If this class of evidence is not complete, it may be necessary to supplement it

"by evidence as to what was probably paid for some items, by showing prices prevailing for work and materials at the time the same were supplied. But the evidence of these prices is merely circumstantial or corroborative evidence of the amount actually paid. In determining actual cost, whatever the evidence, there is no attempt to determine whether the expenditure was wise or foolish or whether it was useful or wasteful. Historical cost, on the other hand, is the amount which normally should have been paid for all the property which is usefully devoted to the public service. It is, in effect, what is termed the "prudent investment". In enterprises efficiently launched and developed, historical cost and original cost would practically coincide both in items included and in amounts paid. That is, the subjects of expenditure would coincide; and the cost at prices prevailing at the time of installation would substantially coincide with the actual cost."

In other words he uses the term in the sense of adjusted historical cost. The term does not connote, nor is it intended to mean value, valuation or appraisal of property.

Again I would like to stress this, in approaching this matter he says: "You have to be fair about it. You will assume the people were honest. You will assume they were efficient unless something is shown to the contrary. As I take it, Mr. Hamilton's evidence or recommended rate base, is in effect predicated on the principle that Mr. Justice Brandeis enunciated. Now I say that the rate base now being formulated by this Board should be "Present Fair Value."

Hamilton's recommended rate base is in effect predicated on the same principle. See: Exhibits 124 and 125, Hamilton's evidence, vol. 50 page 3889, vol. 66 pages 5361-5364.

And again I would like to advert to what the McGillivray

Commission said in its report in 1939, at pages 18 and 19:

"Then again, it seems to us that the fact that the utilities are now for the first time being brought under the control of a regulatory body on the recommendation of your commissioners, is to be taken into account. It may be that in the future, a first rate-base being now determined, a regulatory body might well for the sake of simplicity and convenience dispense with engineering appraisals in further rate-making and adopt original cost methods treating the rate-base now arrived at as being original cost but this would be justifiable only because all capital additions and improvements would then be made with full knowledge on the part of the investors that the rate of return accorded to them would be in the discretion of the Public Utilities Board. It seems to us that the present position is quite different; here a utility which had enjoyed freedom from interference from any outside body is for the first time subjected to regulatory rates. In the case of future capital additions or improvements as stated the investment is made when the investor's eyes are open to how the return upon his money will be measured. In the case in which a utility is being regulated for the first time it is to be remembered that the capital already invested was invested prior to Government announcement of rate control."

And then at page 20 he reaches the conclusion that present value is the proper basis, and he says:

"We think that the conclusion is inescapable; that at least in the case of Common Carriers present brought under control of a regulatory body, a present rate must be rested upon a rate-base which includes the present value of the physical properties."

Then I would like also to refer to an interesting discussion in a book, another book by Barnes, "The Economics of Public Utility Regulation", published in 1942, and in Chapter 17, page 565. Now Barnes is discussing the "Alternatives to The Present Value Rate Base", that is what he is discussing, and at pages 565 to 581 he deals at length with "Prudent Investment", which, as I suggest, is really the method adopted and recommended by Hamilton in Exhibit 125, and Barnes says this: He is talking about the proposed New York Bill, and I suggest that this has some enlightenment for us when we are talking about "prudent investment." He says this:

" Since prudent investment has not been a method of rate regulation followed with precision by any regulatory body, it is necessary to turn to other than case sources for a description of the program. Among the unofficial authorities on public utility regulation, Dr. Bauer has been the most untiring in presenting the prudent-investment programs. In 1929 and 1930 a New York commission'

not a regulatory commission, but a special commission which was appointed:-

"a New York commission was engaged in a study of utility regulation, and at the conclusion of its work there were presented both a majority and a minority report, the latter recommending a prudent-investment program and

"submitting a bill for its enactment. Although the bill failed of passage, it still constitutes the most "authoritative" statement of the details of a prudent-investment method of regulation, and it is on this bill that the present analysis is based.

The initial valuation. The inauguration of the prudent-investment program encounters several difficulties. First, the records of most companies do not accurately indicate the actual investment, For property acquired prior to the supervision of accounts, there can be no confidence in the book-investment figures. And even for the recent period when the utilities have kept their accounts according to a prescribed system, there can be no assurance that the investment has not been impaired through inadequate provision for maintenance and depreciation. Secondly, a proper consideration for the legitimate expectations of security holders requires that there be no abrupt change in regulatory methods which would produce an unjustified curtailment in the earning power of the utility. Thirdly, a desire to avoid any constitutional difficulties has caused advocates of prudent investment to recommend that their program be inaugurated with an initial rate base which is consistent with prevailing principles of regulation, thus avoiding any ex post facto features.'

Now obviously Professor Stewart had something like that in mind when his evidence was given.

Then Barnes goes on:-

"From a consideration of all of these factors, it was provided'

and this was in the New York Bill:

> 'that the prudent investment method should be instituted with an initial valuation of each utility's property. These initial valuations should include all used and useful units of property, and should give due consideration to every element properly considered under the law of the land, including actual cost of the properties, reproduction cost, general expenditures, depreciation, going value, and any other relevant factor."

And then he goes on:

> "Following the determination of the initial rate base, there would be a re-writing of the property accounts of the utility to reflect the commission's final valuation. Thereafter, all determinations of the rate base and of the utility's earnings would be founded on the evidence of the company's capital accounts."

And that is what the McGillivray Commission recommended and the basis upon which it proceeded in 1939, and what the Utility Board has followed with respect to The Valley pipe Line since.

Now Barnes in the same book at page 586, in a footnote, states that the preparation of the recommendation, and the bill have been credited to Professor Bonbright, of Columbia, and to Dr. Bauer consulting economist to the Commission.

And it is to be observed that Mr. Hamilton agreed that the matter or fact of the utilities being regulated for the first time should be taken into account.

And I am not giving the citations from the evidence because the Reporters will put in the volume and pages.

Vol. 47, Pages 3742 - 3744.

Professor Stewart is also of the same opinion.

See Exhibits 131 and 132,

Vol. 56 page 4376
Vol. 57 pages 4484-4486.

Now another phase that I am going to come to and that is the question of administration and overhead during construction.

8. The McGillivray Commission (page 32) added or allowed 10% of the reproduction cost new of physical assets (except land and rights of way) to cover administration and overhead cost during construction.

Now again I refer to this book of Wilson Herring and Eutsler - Public Utility Regulation - 1938, at pages 135-136, where in speaking of overhead values it states:

"In addition to the estimates of the value of the tangible physical units of a utility's property, allowances are generally made for so-called 'overhead costs'. These costs are sometimes divided into two categories, which may be designated as specific and general overheads. The Oregon Commission, in Re Portland Power Co., found that overhead expenditures fall into two classes: (1) expenditures that can be said to relate clearly to particular classes of physical property carried in the various primary accounts; and (2) expenditures that do

not appear to relate to particular classes of physical property but are more directly applicable to the property as a whole. In the first class are expenditures such as superintendence involved in the setting up of a telephone pole, which can be directly attributed to that pole. In the second category are such expenditures as the legal or engineering expenses incurred during a whole utility construction job which must be carried as a separate allowance because it covers the entire property. The term 'overhead allowance' as generally used in public utility valuation refers to this second class of expenditure."

Superintendence and contractors' profits and so on comes under specific costs.

"The nonphysical values represented by overhead costs are considered in the valuation of utility properties for rate making, the sale of securities, the sale of the property, or the determination of compensation to be paid to the owner in condemnation proceedings. Overhead costs must also be considered, whether the valuation of property is in accordance with the reproduction cost theory, the original cost theory, the 'prudent investment' theory, or any variations or combinations of these bases."

Then he goes on:-

"The method of determining overhead costs is not uniform. The conventional method is to make a separate allowance of an estimated percentage of the physical value for each overhead item. General construction overhead allowance varies from 10 to 20 per cent of the total

valuation of the properties - with 15 per cent as a fairly common figure."

Now then Mr. Hill at page 14 of his report, Exhibit 59, states that, in his appraisal, he allowed 9% in this respect (which he states is low) and this is how he makes it up:-

Administration during construction (management, accounting etc.)	2%
Engineering design and supervision	3%
Legal services, insurance, taxes and damages during construction	1%
Interest during construction	3%
	9%

Hill stated that the 9% rate for general overhead is the lowest allowance that he had ever used in valuations and that the 9% rate is about one-half the rate required by organizations not as powerfully sponsored as Royalite.

Vol. 20 page 1551,
Vol. 23, pages 1790-1794.

Hamilton, in his Exhibit 125, admits that, according to his experience as an accountant, the 9% suggested by Hill would not appear unreasonable.

THE CHAIRMAN: That is the only evidence we have Mr. Chambers ?

MR. CHAMBERS: Yes, and I say I am not asking for more than 9%.

THE CHAIRMAN: But I want to make sure.

MR. CHAMBERS: Yes, that is right and the only thing is Mr. Hill's estimate is low and I say the evidence is that it is

a low rate and that may be a matter of some consequence and some importance in considering other phases.

Now, going value, and I will admit at once that the authorities are not clear cut by any means, but I am trying to put before you what has been stated from time to time by some of the higher Courts, and it is a matter that should be given consideration in my opinion.

9. GOING VALUE.

Los Angeles Gas & Electric Corp. v. Ry. Comm. of Cal. (1933) 289 U.S. 28;
77 L. ed. 1180.

Hughes, C. J. at pages 1196-7 (L.ed.)states:

"This court has declared it to be self-evident that there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, and that this element of value is a property right which should be considered in determining the value of the property upon which the owner has a right to make a fair return.....The going value thus recognized is not to be confused with good will, in the sense of that element of value which inheres in the fixed and favorable consideration of customers, arising from an established and well-known and well-conducted business, which as the Court has repeatedly said, is not to be considered in determining whether rates fixed for public service corporations are confiscatory.....The concept of going value is not to be used to escape the just exercise of the regulatory power in fixing rates, and, on the other hand, that authority is not entitled to treat a living organism as nothing more than bare bones."

Then in Driscoll v. Edison Lt. & Power Co.
(1939 307 U.S. 104;
83 L. ed. 1134.

The Court held that a Commission, making no specific allowance for going concern value, gives practical effect to this consideration when it fixes fair value considerably in excess of original and reproduction cost, both depreciated.

Then in International Ry. Co. v. Prendergast case
(1932) 1 P.U.R. (New Series) 397 (U.S.D.C.)

A proper method for an analysis of going value of a utility's property is to tell what capital expenditures would be required to transfer the utility reproduced and ready to begin operations into the utility operating at its existing normal rate.

Then again there is the United Gas Public Service Co. v. Texas, (1938) 303 U.S. 123, 82 L.ed. 702.

Chief Justice Hughes, speaking for the U. S. Supreme Court, summarizes (with approval) the instructions of the court below to the jury, regarding "going value" as follows, and this is apparently what the Judge told the jury:-

> "That by 'going value' was meant the added value of appellant's property as a whole, used and useful for serving the City, over the sum of the value of its component parts, by reason of the fact 'that it is an operating, assembled and established property, functioning with a trained personnel, a co-ordinated plant and property, with customers attached, and its business established.'"

Then there is the Des Moines Gas Co. v. Des Moines, (1915) 238 U.S. S.C. 153, 59 L. ed. 1244.

Mr. Justice Day, in delivering the opinion of the Court, states at page 1251:

> "That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property upon which the owner has the right to make a fair return when the same is privately owned, although dedicated to public use."

The Court held that:

> "'The going value' of a long established and successful gas company was sufficiently taken into account in determining the value of the company's property for the purpose of testing the reasonableness of gas rates fixed by municipal ordinance, where the valuation was based upon a plant in actual and successful operation, and overhead charges were allowed for promotion, organization and development expenses."

See also:

McCardle v. Indianapolis Water Co.
(1927) 272 U.S. 400,
71 L. ed. 316,

Butler J. at page 326.

Now referring to what Hill said in his report, Exhibit 59, he made it clear that the factors that he provided for in his 9% general overhead allowance did not in any way relate to, or make provision for, going value.

He pointed this out that:

(a) Royalite's natural gas division was a seasoned and successfully operated business,

(b) it had enjoyed, and Madison would continue to have the benefit of, the engineering services and advice of widely experienced officers of a strong parent company,

(c) it had enjoyed, and would have available, strong financial backing and sponsorship,

(d) it had and would have available highly qualified and experienced management on a part-time basis,

(e) it had and would have available the purchasing power and market knowledge of a strong parent organization,

(e) it had and would have available the purchasing power and market knowledge of a strong parent organization,

(f) Madison was acquiring the property free of engineering and construction mistakes.

He then concluded as his definite opinion that $200,000.00 should be added to the present day value or cost of the bare bones of the physical properties installed.

Exhibit 59, pages 19,20 and 23,

Exhibit 67.

He thinks that the $200,000.00 is a part of the value of the property because it has been so successfully built and put together and can be economically operated.

Vol. 20, pages 1592-1593.

At page 1655 of volume 21, Hill states that, in his view, going value is that increment of value which adheres to a business that is well built and well run, over the cost of its physical value.

If the Madison plant had been built by

others it would have cost more than it actually did.

Vol. 22 pages 1766-1768.

Stevens Guille stated that Madison's free consultive engineering advice from Imperial and Royalite and its purchasing service provided by those companies are definitely over and above any amount paid the purchasing department.

Vol. 45 pages 3512 to 3514, 3527.

THE CHAIRMAN: I have forgotten, Mr. Chambers, was there any evidence that Imperial operated a gas field at any other place which would put them in a better position to judge than engineers on the ground ?

MR. CHAMBERS: I do not think there is any such evidence. They do. That is not evidence.

Hamilton admits that there is nothing included in his recommended rate base for going concern value.

Vol. 47 pages 3698-3702,
Vol. 49 pages 3848-3849.

Finally he stated (vol. 66 page 5313) that he had an open mind as to whether something should be added to his adjusted historical cost figure for going value.

Vol. 66 pages 5313-5314,

Professor Stewart in his summary (Exhibit 132 - vol. 55 page 4318) says this:-

"But there is a danger if the rate base includes nothing more than the replacement cost of the physical properties plus overheads and working capital that, in particular cases, utilities coming under regulation may lose the fruits of the special efficiency with which the utility has been operated."

See also his evidence.

Vol. 55 pages 4352-4353,
Vol. 56 pages 4397-4402.

Now then I come to depreciation.

10. WHAT IS DEPRECIATION?

The only purpose or object of considering or determining existing depreciation at this time of course is to arrive at the present day fair value of the plant and equipment as at the date (March, 1944) it was by the statute brought under regulation.

(Go to Page 6641)

Now this term "depreciation" means apparently different things to different people, and all I can do, Sir, is lay before you certain definitions and quotations from recognized authorities.

First of all I refer to Whitten and Wilcox, - Valuation of Public Service Corporations, 1928. Volume 2 at page 1660 defines- "accrued depreciation" as follows:-

> "Accrued depreciation in a public utility is that loss in total service value which comes from physical deterioration or lessened adaptation to function."

Then there is the American Society of Civil Engineers - Principles of Depreciation, 1944, at page 1365: Depreciation:

> "Broadly speaking, depreciation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy and obsolescence. Annual depreciation is the loss which takes place in a year."

And in the same work at Page 1366, they deal with amortization, this is what they say:

> "The liquidation or extinguishment of the investment in a property, by means of a series of partial payments, is prorated to extend over the period during which the property will exist, or over the period during which it is anticipated that benefit will be realized."

And then there is the Lindheimer v. Illinois Bell Telephone

Company, (1934) 292, U.S. 150, 78 L.ed. 1182.

Chief Justice Hughes gives the definition exactly which is quoted by the American Society of Engineers, at page 167:-

> "Broadly speaking, depreciation is the loss, not restored by current maintenance, which is due to all factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay and inadequacy and obsolescence. Annual depreciation is the loss which takes place in a year."

And at page 1196 he refers to the fact that while depreciation may be regarded as the expense occasioned by the using up of physical capital assets whereas current maintenance is the expense of keeping those assets in operating condition, nevertheless, and this is what he says,

> "the distinction is a difficult one to observe in practice with scientific precision, and the outlays for maintenance charged to current expense may involve many substitutions of new for old parts which tend to keep down the accrued depreciation."

Now Hamilton, Volume 48, pages 3785-6, stated that he agreed with the foregoing definition of the American Society of Civil Engineers.

He also (Volume 48, page 3786) agreed with the following definition of depreciation in Accounting Terminology of the Dominion Association of Chartered Accountants at page 26, where they say:

> "Depreciation - the diminution in service of physical

Argument by Mr. Chambers.

"value of an asset caused by wear and tear, wind and weather, age, obsolescence, etc.."

I will say this, that Mr. Hamilton thought that word "etcetera" covered most anything. I submit that it is used in the sense of inadequacy or over-adequacy and so on. In other words, it is qualified by the words already used.

Then there is the Report of Committee on Depreciation - National Association of Railroad and Utilities Commissioners, put out in 1943, (Chairman - Nelson Lee Smith - page 13) at page 30:

"The true significance of depreciation is believed to be expressed by the following statements:

(1) Depreciation is the expiration or consumption, in whole or in part, of service life or utility of property resulting from the action of one or more of the forces operating to bring about the retirement of such property from service;

(2) The forces so operating include wear and tear, decay, action of the elements, inadequacy, obsolescence, and public requirements;

(3) Depreciation results in a cost of service."

Now, I will say this, and I have no specific information on it. I do submit that the Rport of this Committee should be viewed in this light, that it is a committee of regulatory bodies and that the report was designed to be a guide and also as a study, and the application of these depreciation principles to businesses already under regulation, and have been for years, and I think if we do that in that sense there

will be no quarrel with that, because in that sense, in the definition as given here, they seek to spread uniformly between the customers of today and of tomorrow those depreciation expenses, but if those words are applied to something that is being regulated for the first time, then it is a different proposition.

Then there is the Journal of Accountancy - March,1944, which is the Official Organ of the American Institute of Accountants. And I would like to say here that I have that available if you care to see it. And at the back of the publication at pages 254 to 258, there appears under the heading"Official Decisions and Releases", a letter dated January 28th, 1944, from Walter A. Staub, Chairman, Committee on Accounting Procedure, American Institute of Accountants, which is addressed to Nelson Lee Smith, Chairman of the N.A.R.U.C. Committee, and apparently Chairman Smith had asked the Committee of the Institute of Accountants and asked them to comment on the 1943 N.A.R.U.C. Report, and in this letter it is quoted, it is stated at page 254:

> "It would have been helpful to distinguish between three different senses in which the term 'depreciation' has been used in the past and is used in passages cited in the report; namely, (a) to describe a decline in value from any cause whatever; (b) to describe a decline in value attributable to partial exhaustion of useful life; and (c) to describe systematic amortization of cost, or other basic value,over useful life without regard to value during that life. A constant regard for these distinctions is essential to an understanding of dicta on the subject contained in court decisions or other statements."

And then they go on in this same letter:

"We believe that your report should make clear, either in the definition or elsewhere, two points which are emphasized in the definition contained in Research Bulletin No. 20 and the note attached thereto. The first is that depreciation is a process of conventional allocation, not of valuation. It follows that cost less depreciation cannot properly be described as a value figure."

Then it goes on further:

"Depreciation accounting may be required (1) in determining the amount of disposable income; (2) in the measurement of earning capacity; (3) in the determination of income that may fairly be taxed; (4) for the regulation of rates; (5) for the valuation of property, and perhaps for other purposes. For the first of these purposes a high degree of conservatism, is justifiable and even desirable, since only prudence and no conflict of interest is involved. For tax purposes, also, conservatism is called for, since the government shares in profits but not in losses and its participation is continuing. For valuation as between buyer and seller, conservatism has no proper place; in this instance, the relation between the value of new property and property whose life is partly exhausted is the crucial consideration. The convention that is appropriate for one of these purposes may thus be quite inappropriate for another."

And it is in that sense that I quote these authorities,

sir, and in all these statements we have to use this term, depreciation, with some regard to the circumstances to which we are applying them, and that a rule or a definition of depreciation to be applied to a company which is under regulation from its inception is a different proposition than when you are arriving at values.

Now, Mr. Hamilton in Volume 49, pages 3825-6, stated he was not in entire agreement with the part of the letter first above quoted. That is the letter which I have just read.

Professor Stewart, on page 1 of his Summary, Exhibit 132, states this:

"Where the initial step in determing the rate base is an appraisal of the property new, allowance must then be made for depreciation. While it may be useful to distinguish between different sources or causes of depreciation, the significant effect which it is designed to measure is the reduction in value.'"

On the same page he instances the following causes of depreciation, or decline in value:

(i) fall in demand for, or price of, the product sold or turned out by the plant or property being valued - when the property is valued at current prices that factor is thereby accounted for:

(ii) physical wear and tear;

(iii) obsolescence.

And then Professor Stewart in the same exhibit refers to amortization or provision for depreciation and states (page 2) that even if a company prior to regulation has followed "accepted accounting principles applying on appropriate formula, the provision for depreciation (and the amortized cost) may be greater or less than realized depreciation."

And then at page 2 he also points out that:

"The rate of depreciation derived from depreciation formulae are necessarily related to average past experience."

and therefore, he goes on,

"the realized depreciation, due to both structural and functional causes, may exceed or fall far short of the anticipated depreciation based on useful-life expectancy data."

He therefore concludes that,

"for this reason, in the case of companies coming under regulation for the first time, the method of determining depreciation by inspection may be preferred."

And then he goes on that an estimate by the inspection method,

"should account for depreciation due to both structural and functional causes."

And at pages 4404-5 of Volume 56, his evidence is this, the question was put to him.

"Q As I understand it in other words depreciation is the extent to which the actual existing plant falls short of what a new and up-to-date plant will

" be, would that be a fair way to put it?

"A In principle, yes. The practical approach to the question raises practical problems. I think you can either measure obsolescence by comparing the cost of reconstructing the identical plant.

"Q I am coming to that.

"A Or substituting a more efficient up-to-date plant. That would be one way. The other procedure would be to go into the plant and appraise the plant as it is and to depreciate the various structures, taking into account the obsolescence in each case. Now in principle perhaps these might not give you very different results but I think they might quite well give you different results, however, because the comparison of the completely new structure with the existing physical facilities might involve a much greater transition than the reproduction of certain parts of the existing plant because of obsolescence. But in my view, the practicalprocedure would be to appraise the property as it is, taking obsolescence into consideration in the valuation of the particular part. My reason for that is that the procedure of comparing an entirely different and substitute plant is too hypothetical. That is a practical consideration.

"Q But no matter which method you use, the objective is, or your desired objective is the same. What we are trying to get at is to measure the extent to which the plant now there falls short of what

" a new and up-to-date plant would be. Is not that the objective?

"A In general I agree, yes, That would be satisfactory."

Now that brings me to the next point of how should existing depreciation be determined in arriving at a present-day value of the property. I suggest that that would be a good place to stop.

THE CHAIRMAN: Perhaps you had better do that at 10 o'clock in the morning.

(At this stage the Hearing was adjourned until 10 A.M., June 11th, 1946).